

(21,948)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 181.

JUAN MARTINO GONZALES, APPELLANT,

vs.

LEON RAMOS BUIST, ANTONIO RAMOS BUIST, JESUS
RAMOS BUIST, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
PORTO RICO.

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THE UNITED STATES OF AMERICA,
District of Porto Rico, ss:

a stated term of the District Court of the United States for Porto Rico, within and for the district aforesaid, begun and held at the court-rooms of said Court, in the city of San Juan, on the second Monday of April, being the thirteenth day of that month, in the year of our Lord One Thousand Nine hundred and eight, and of the Independence of the United States of America the one hundred and thirty-third.

Present, the Honorable Bernard S. Rodey, Judge.
Among the proceedings had was the rendition of a judgment in e following case, to wit:

JUAN MARTINÓ GONZALES, Plaintiff,
vs.

LEON RAMOS BUIST, JESUS RAMOS BUIST, ANTONIA RAMOS BUIST,
CLEMENCIA RAMOS BUIST, BELEN RAMOS BUIST, Defendants.

Be it remembered, that heretofore, to wit, on the nineteenth day of March, A. D. 1907, came the plaintiff by his attorney and filed his complaint in this cause, which said complaint is as follows, to wit:

JUAN MARTINÓ GONZALES, Plaintiff,
vs.

LEON RAMOS BUIST, JESUS RAMOS BUIST, ANTONIA RAMOS BUIST,
CLEMENCIA RAMOS BUIST, BELEN RAMOS BUIST, Defendants.

Ejectment.

Complaint.

Now comes the plaintiff above named, Juan Martino Gonzales, y his Attorney T. D. Mott, Jr., and complains of the defendants bove named and for cause of action alleges:

I.

That the said plaintiff now is and at all times hereinafter mentioned was a subject of the Kingdom of Spain.

II.

That on the 4th day of March of 1907, the said plaintiff was the owner in fee simple (dominio), and was possessed and entitled o the possession of a certain tract or parcel of land situate in the District of Porto Rico, jurisdiction of Bayamon, and containing 100 acres more or less, and which said parcel or tract of land is more particularly described as follows, to-wit:

A tract of land consisting of 100 acres in the District of Porto Rico, jurisdiction of Bayamon and bounded: on the north by the river Puerto Nuevo. On the east by the caño of the Quebrada Margarita, at a point or points which forms the outlet of the waters of the Quebrada Barraco; and part of the Quebrada Margarita; on the south by a row of Majagua trees which divides it from the lands owned by the Sucesión de Arroyo and Eduardo Gonzales Canejas; on the west by lands owned by Eduardo Gonzales Canejas, and by the caño Seboruco del Rey.

III.

That while the complainant was such owner and so seized as aforesaid, the defendants afterwards to wit: on the 4th day of March of 1907, and without right or title, entered into the possession of said 100 cuerdas and ousted and ejected the plaintiff therefrom and now unlawfully withhold the possession of said

<100>

[80]*^A cuerdas from the complainant to his damage in the sum of \$1200.

IV.

<100>

That the value of the ^A[80]* cuerdas so withheld as aforesaid by the said defendants from the complainant is the sum of \$6,000, and that the rents issues and profits of said premises on the said 4th day of March, 1907, and while the plaintiff has been excluded therefrom by the defendants as above set forth is the sum of \$1300.

Wherefore the complainant prays, that by proper judgment of this Court he be declared the owner of and entitled to the possession of the premises aforesaid and further prays for judgment against said defendants in the sum of \$1200 damages for withholding the possession of said premises from complainant and the sum of \$1300 the value of said rents, issues and profit and also for costs of suit.

T. D. MOTT, JR.,
Attorney for the Plaintiff.

Answer.

(Filed Apr. 24, 1907.)

JUAN MARTINÓ GONZALEZ, Plaintiff,
vs.

LEON RAMOS BUIST, JESUS RAMOS BUIST, CLEMENCIO RAMOS BUIST,
and BELEN RAMOS BUIST, Defendants.

4 The defendants in the above entitled action answering the complaint of the plaintiff herein say:

[*Figures enclosed in brackets erased in copy.]

I.

The defendants deny that on the 4th day of March, 1907, or at any other time, or at all, the plaintiff was the owner in fee simple, or at all, of the property described in his complaint in this action; but the defendants admit that the plaintiff was in possession of said property upon said date, while at the same time the defendants deny that plaintiff was upon said date or at any other time entitled to be in possession of said property, or that he was ever in the lawful possession of the same.

II.

Answering the third allegation of plaintiff's complaint herein the defendants aver that the plaintiff never was the owner of said property, or that on the 4th day of March, 1907, the defendants, without right or title, entered into the possession of 80 cuerdas of said 100 cuerdas and ejected the plaintiff therefrom, and unlawfully withhold the possession of said 80 cuerdas from the plaintiff to his damage in the sum of \$1200, or that defendants withhold the possession of said land from the plaintiff to his damage in any sum whatsoever; although the defendants admit that because of the facts and reasons hereinafter set forth they were lawfully placed in possession of said property, and that they do now hold possession of the same against the claim of the plaintiff under and by virtue of the judgment of the law as will hereinafter be more fully set forth.

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III.

Answering the fourth allegation of plaintiff's complaint herein the defendants say that they do not know the value of the land in controversy, and therefore demand of plaintiff strict proof of his allegation to the effect that the sum alleged in said allegation fourth, to wit, the sum of \$6000 is the true value thereof; but defendants deny that the rents, issues and profits of said premises arising since the fourth day of March, 1907, while the defendants have been in possession of said property, amount to the sum of \$1300, or that the said rents, issues and profits amount to any sum whatever beyond a mere nominal sum that might follow the occupation of the premises during which time the said premises have been under careful care and preservation.

For a separate and further answer to the plaintiff's complaint herein the defendants say that the entire question sought to be litigated by the plaintiff in this action is wholly res-adjudicata and should not be entertained by this Honorable Court, for the following reasons, to wit:

That the said land in controversy was the subject of litigation between the grantor of the plaintiff herein, and these defendants and that the same was tried and carried to a final judgment in the District Court of San Juan, Porto Rico, which judgment was thereafter on the 29th day of June, 1906, affirmed by the Supreme Court of Porto Rico, and that under and by virtue of said judgment, the said land in controversy was by said Court duly adjudicated to the

defendants herein, and that the Marshal of the said District Court, by virtue of an order issued by said Court placed the defendants in possession of said property, whereby the plaintiff herein or his grantor, was duly dispossessed of the possession of said property, and
 6 these defendants were by due process of law and after a full and complete adjudication of all of the rights of all of the parties, both this plaintiff and his grantor, placed in possession of said premises; the defendants further say that the facts as herein averred are fully set forth in the certified copy of the proceedings had in the District Court of Porto Rico in and for the District of San Juan, said record of said District Court, so certified being hereto attached, marked exhibit "A" and made a part hereof.

Wherefore, defendants submit that the questions involved in this action have all been litigated to a final determination in the District and Supreme Courts of Porto Rico, and that the question should not as a matter of law be further considered by this Honorable Court; and defendants ask that they be dismissed hence with an allowance of their costs and disbursements.

SWEET, ROSSY & CAMPILLO,
Attorneys for Defendants.

En La Corte de Distrito de San Juan.

ANTONIO RAMOS MENCO, Hoy su Sucesión,
 vs.
 MANUEL DIAZ CANEJA.

Jose E. Figueras, Secretario de esta Corte de Distrito de San Juan.

Certifico: Que en el presente pleito, el Tribunal de Distrito de San Juan dictó en 29 Julio 1900, la siguiente sentencia:

"Fallamos: Que declarando con lugar la presente demanda y sin lugar la reconvención, debemos condenar y condenamos a Don Manuel Diaz Caneja a tener como guardaraya de las fincas "Pueblo Viejo de abajo" y "San Patricio," el curso natural de la quebrada "Margarita" por donde corría antes de interponerse el interdicto á cuyo estado debe reponerse ó sea desde el extremo Norte del palenque de emajagua á pasar por entre los seborucos de "Mala tierra" y del "Rey" por el lado de este ultimo, que pertenece á "San Patricio" en dirección al pajonal en donde se riegan las aguas para salir luego al río "Puerto Nuevo"; debiendo devolver Diaz Caneja á Ramos, hoy su sucesión el terreno de que se apoderó calculado en unas ochenta cuerdas, situado entre la quebrada por su curso natural al Oeste del seboruco del "Rey" el río "Puerto Nuevo" el palenque de emajagua y el charco de las "Yaguazas" cuyos terrenos poseía antes el demandante y constan sus colindancias en la anotación del Registro de la Propiedad, con sus frutos producidos ó debidos producir desde el 13 Febrero 1888 y al pago de todas las costas."

Esta sentencia fué confirmada por la de la Corte Suprema de Puerto Rico, de 29 Junio 1906 que dice así:

“Este Tribunal Supremo, despues de haber revisado cuidadosamente los autos y de haber prestado la debida atención á las alegaciones orales y escritas de ambas partes, decide en consecuencia con el anterior dictamen, confirmar como confirma la sentencia apelada que dictó la Corte de Distrito de San Juan en 29 Julio 1900, con las costas del recurso tambien á cargo del apelante don

Manuel Diaz Caneja.”

8 Segun mandamiento dirigido al Registrador de la propiedad de San Juan en Enero de 1890, por orden del antiguo Juzga de primera instancia de San Francisco, de esta ciudad, para la anotación de la demanda en este pleito, se anotó en dicho Registro en 31 Enero 1890, al folio 183 del tomo 2 de Rio Piedras, finca número 99 y con la letra “A,” “un predio de terreno á pasto y monte como de ochenta cuerdas proximamente de extensión equivalente á treinta y una hectáreas, cuarenta y cuatro áreas y treinta y una centiáreas que desde tiempo inmemorial forma parte de la hacienda “San Patricio” de la propiedad del Sr. Ramos á radicada en el partido de Rio Piedras, barrio de “Monacillos,” situado dicho pedazo de terreno en la colindancia de esta finca y la estancia “Pueblo viejo de abajo” que posee el Presbítero Sr. Diaz Caneja en el partido de Bayamón, y colinda por el Oeste con la sucesión de Ramón Gutierrez del Arroyo, el presbítero don Manuel Diaz Caneja y la quebrada “Margarita”; por el Norte y Este con el río “Puerto Nuevo” y por el Sud con terrenos de la misma hacienda “San Patricio” donde existe un pozo ó charco denominado de las “Yaguazas”;

En virtud de moción presentada por el Abogado de los demandantes como componentes de la sucesión Ramos, que son Leon, Jesús, Antonia, Clemencia y Belen Ramos, esta Corte de Distrito expidió orden de ejecución el di dia 4 de Marzo del corriente para que el Marshal procediera á cumplir la sentencia restableciendo la colindancia entre las fincas “Pueblo Viejo de abajo” y “San Patricio” al curso natural de la quebrada “Margarita” del modo que dice la sentencia, y poniendo á los demandantes en posesión del terreno expresado tambien en la sentencia á cuyo efecto se requeriría al demandado Diaz Caneja ó á las personas que hoy estuvieren en posesión de la finca.

En virtud de la expresa orden de la Corte se libró orden de ejecución al Marshal de esta Corte en el mismo dia 4 Marzo 9 1907.

Y á petición del Abogado de los demandantes expido esta certificación bajo mi firma y con el sello de la Corte hoy veinte y siete Marzo de mil novecientos siete.

JOSE E. FIGUERAS,

Secretario,

Por A. MARINI MARIEN,

Secretario Auxiliar.

10 In the District Court of San Juan.

ANTONIA RAMOS MENCO, Today Its Succession,
vs.
MANUEL DIAZ CANEJA.

José E. Figueras, Secretary of the District Court of San Juan certifies:

That in the case above mentioned the District Court of San Juan rendered the following judgment on July 29, 1900.

"The Court holds: That declaring the action well taken, and dismissing the cross-bill, we ought to adjudge and do hereby adjudge that Manuel Diaz Caneja shall regard as the boundary lines of the estates "Pueblo Viejo de Abajo" and "San Patricio," the natural course of the Margarita creek, whereby it run before the injunction, (interdicto), to which position it must be replaced, that is, from the extreme North of the emajagua palisade, to run through the "seboruco of Mala Tierra" and that of del "Rey," on the side of the latter, which belongs to "San Patricio," on the direction of the "Pajonal," at a point where the waters spread to empty afterwards into the Puerto Nuevo river; the said Diaz Caneja to return to Ramos, now his succession, the land usurped by him, calculated in about 80 acres, situated between the creek at its natural course west of Seboruco del Rey, Puerto Nuevo River, the emajagua palisade and the Yaguaza pond, which land was formerly possessed by the plaintiff, its boundary lines being set forth in the annotation in the register of property together with fruit yielded or that should have been yielded since Feb. 13, 1888, and the payment of all costs."

11 This judgment was confirmed by that of the Supreme Court of Porto Rico, on June 29, 1906, to wit:

"This Supreme Court, after having carefully examined the proceedings, and given due attention to the verbal and written arguments of both parties, decides in conformity with the former decision, and confirms the judgment appealed from entered by the District Court of San Juan, July 29, 1900, the costs of the appeal charged to the appellant Manuel Diaz Caneja."

According to an order addressed to the Registrar of Property of San Juan in January 1890, by the former Court of First Instance of San Francisco district, San Juan, for the annotation of the bill filed in this suit, an annotation was made in the said register the 31 January, 1890, on folio 183, vol. 2 of Rio Piedras, property No. 99, letter A, on a tract of pasture land of about 80 acres, equal to 31 hectareas, 44 areas, and 31 centiareas, which from time immemorial are a part of "San Patricio" plantation, belonging to Ramos, situated in Rio Piedras, Monacillo ward, the said tract of land between the boundary lines of the said property and those of the estate of "Pueblo Viejo de Abajo," possessed by the Rev. Diaz Caneja, in Bayamón, and bounded: on the West by the property of Ramon Gutierrez del Arroyo, the property of Manuel Diaz Caneja, and the

Margarita creek, on the North and East by the "Puerto Nuevo" river; and on the South by San Patricio plantation, at a point where there is a well or pond known as the Yaguazas.

By virtue of a motion filed by the counsel for the complainant (the Ramos Succession, Leon, Jesus, Antonia, Clemencia and Belen Ramos), this District Court issued an order of execution the 4th

12 March inst. to the Marshal to proceed to carry out the judgment restoring the boundary lines between the estates

"Pueblo Viejo de Abajo" and "San Patricio," to the natural course of the Margarita creek, as set forth in the judgment, and placing the plaintiffs in possession of the lands also defined in the judgment, for which purpose the defendant, Diaz Caneja, or person in possession, shall be notified the effect of said judgment.

By virtue of the said order the Court issued an order to the Marshal of this Court the 4th March, 1907.

By request of the Counsel for the complainant I issue this present certificate under my signature and seal of the Court, this 27th day of March, 1907.

(Signed)

JOSÉ E. FIGUERAS,
Secretary,
By A. MARIN MARIEN,
Acting Secretary.

Service by copy accepted this 24th day of April, 1907.

T. D. MOTT, JR.,
Attorney for Plaintiff.

(Journal Entry, May 24, 1907.)

No. 456.

JUAN MARTINÓ GONZALES
vs.
LEÓN RAMOS BUIST et al.

Continued for the term.

13 *(Journal Entry, April 4, 1908.)*

No. 456.

JUAN MARTINÓ GONZALEZ
vs.
LEÓN RAMOS BUIST et al.

In presence of the respective counsel this cause is set for trial for April 24th instant.

(*Journal Entry, April 25, 1908.*)

No. 456.

JUAN MARTINÓ GONZALEZ

vs.

LEÓN RAMOS BUIST et al.

Come the parties above named by their respective attorneys, T. D. Mott, Jr., Esq., for the plaintiff and Willis Sweet, Esq., for the defendants, and hereby agree and stipulate as follows, to wit:

Each of said parties does hereby waive a trial by jury in the above-entitled cause, and does agree that the issues in said cause shall be heard and decided by the Court alone without the aid of a jury, and that the said Court shall try and decide all issues of fact as well as of law involved in said cause after hearing the evidence in the same.

(*Stipulation. Filed Apr. 25, 1908.*)

No. 456. At Law.

JUAN MARTINÓ GONZALEZ

vs.

LEON RAMOS BUIST et al.

Stipulation Waiving Trial by Jury.

Now come the parties above named by their respective attorneys, T. D. Mott, Jr., Esq., for the plaintiff and Willis Sweet, Esq., for the defendants, and hereby agree and stipulate as follows, to wit:

Each of said parties does hereby waive a trial by jury in the above entitled cause and does agree that the issues in said cause shall be heard and decided by the Court alone without the aid of a jury and that the said Court shall try and decide all issues of fact as well as of law involved in said cause, after hearing the evidence in the same.

San Juan, Porto Rico, April 25, 1908.

T. D. MOTT, JR.
WILLIS SWEET.

(*Journal Entry, July 9, 1908.*)

No. 456.

JUAN MARTINÓ GONZALEZ

vs.

LEÓN RAMOS BUIST et al.

The trial of this cause is on this day continued as per the last entry herein, both parties being present by their respective counsel

T. D. Mott, Jr., Esq., for the plaintiff and Willis Sweet, Esq., for the defendants. Whereupon counsel for the plaintiff is permitted to amend his complaint by interlineation to show that the defendants dispossessed the plaintiff of 100 cuerdas of land instead of 80 cuerdas as alleged, which is then and there done.

Thereupon Willis Sweet, Esq., attorney for the defendants, moves the Court for leave to amend a certain clause of the answer as specified in the amendment which he presents in open court, and there being no objection to the same, the Court on consideration 15 thereof allows such amendment to be filed and to be substituted as in the same set out for the clause in the original answer.

Whereupon the Court, not being satisfied with the situation of the pleadings, calls upon the respective counsel for argument as to the question whether or not the plea as to the matters in issue being res judicata should not be sustained. Thereupon such argument is proceeded with, and the Court, after having heard counsel for the respective sides in that behalf, gave them until Monday the 13th instant to file briefs and memoranda of authorities, after which the issue will be passed upon.

(Amendment to Answer. Filed July 9, 1908.)

JUAN MARTINÓ GONZALEZ, Plaintiff,
vs.

LEON RAMOS BUIST, JESUS RAMOS BUIST, CLEMENCIO RAMOS
BUIST, and BELEN RAMOS BUIST, Defendants.

Proposed Amendment.

To the plaintiff, Juan Martinó Gonzalez, and to T. D. Mott, his attorney:

GENTLEMEN: You will please take notice that the above named defendants will move the above entitled Court for permission to amend their answer now on file in said cause by substituting the following paragraph for the paragraph commencing with the words "that the said land in controversy" at the bottom of page 2 of said answer and continuing on page 3 of said answer to the prayer of said answer. This application will be made on Monday the sixth 16 day of July, 1908, at the Court room of the United States Court in San Juan at 10 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard:

That the said land in controversy was the subject of litigation between the grantor of the plaintiff herein and these defendants, and that the same was tried and carried to a final judgment in the District Court of San Juan, Porto Rico, which judgment was thereafter on the 29 day of June, 1906, affirmed by the Supreme Court of Porto Rico, and that under and by virtue of said judgment, the said land in controversy was by said Court duly adjudicated to the defendants herein, and that the Marshal of the said District Court, by virtue of an order issued by said Court placed the defendants in possession of said property, whereby the plaintiff herein or his

grantor, was duly dispossessed of the possession of said property, and these defendants were by the processes of law and after a full and complete adjudication of all of the rights of all of the parties, placed in possession of said premises; and in this connection defendants say that on the day after these defendants brought said action against Manuel Diaz Caneja in the said District Court of Porto Rico in and for the District of San Juan the said Manuel Diaz Caneja transferred all of his property to his nephew, one Eduardo Gonzalez Caneja, who in turn transferred the property, subject of the present controversy Juan Martinó Gonzalez, the complainant herein, but the said Eduardo Gonzalez Caneja continued in the possession of said property by virtue of a pretended lease, and as such pretended lessee is now in possession of said property; and the defendants further allege that the said Manuel Diaz Caneja transferred to his nephew, the said Eduardo Gonzalez Caneja, and the latter to the plaintiff herein, the property in question, with

17 a view on the part of all of said parties, to wit: The said Manuel Diaz Caneja, Eduardo Gonzalez Caneja, and Juan Martinó Gonzalez of avoiding the results and responsibilities of the said action brought by these defendants against the said Manuel Diaz Caneja in the said District Court of Porto Rico as aforesaid; and that because of these facts as the same are here and now recited, the defendants are informed and believe and charge the fact to be that said plaintiff was at all times privy to all of the acts and purposes of the said Caneja in transferring said property and that because thereof he was also bound by the said judgment in said action which the defendants herein plead as res adjudicata to the complaint herein; the defendants further say that the judgment herein averred is fully set forth in the certified copy of the proceedings had in the District Court of Porto Rico in and for the District of San Juan, said record so certified being hereto attached, marked exhibit "A" and made a part hereof.

SWEET, ROSSY, CAMPILLO,
Attorneys for Defendants.

A copy of the foregoing proposed amendment was received this 26th day of June, 1908, and service of the same is hereby acknowledged.

T. D. MOTT, JR.,
Attorney for Plaintiff.

JUAN MARTINO GONZALEZ

vs.

LEON RAMOS BUIST.

Ejectment.

Stipulation.

The parties hereto, by their respective attorneys, stipulate and agree that this cause shall not be proceeded with as to trial and pro-

ceedings on appeal until after the first day of October, 1908, and not then, unless the attorneys for both parties should be in Porto Rico.

San Juan, Porto Rico, July 27, 1908.

T. D. MOTT, JR.,
Attorney for Plaintiff.
WILLIS SWEET,
Of Attorneys for Defendant.

(*Opinion. Filed July 31, 1908.*)

No. 456. Ejectment.

JUAN MARTINÓ GONZALEZ, Plaintiff,
vs.
LEON RAMOS BUIST et als., Defendants.

This is a suit in ejectment to recover possession of 100 cuerdas of land situated immediately south of the bay of San Juan Porto Rico.

The parties waived a jury trial and stipulated to try the 19 case before the Court alone.

A short oral hearing was had when counsel made their statements, but no witnesses were introduced.

After an inspection of the record we concluded that the plea of res adjudicata might be well founded, and therefore we called upon counsel to present transcript proofs of the same and written briefs in regard to the same which each soon thereafter did. Therefore the matter is before us now upon the general demurrer of the defendants and their said plea to the complaint.

There is in our opinion sufficient evidence before us in the way of exhibits filed with the written arguments of counsel to enable us to fully understand and pass upon this plea of res adjudicata, without calling for or permitting any further proofs in the premises.

From a full examination of the matter we are satisfied that this suit on the part of this plaintiff is nothing more or less than an effort to get a new trial of an issue already decided and to circumvent the action of the Insular Court where the matter has been fully tried and decided.

The remedy of this plaintiff if he has any, is in our opinion to take an appeal from the decision of the Supreme Court of Porto Rico, if he can, or to move in the insular courts for a modification of the judgment, and not to attempt to attack it collaterally here.

We do not think the point about the warning notice made in the brief for complainant has any merit and we fully agree with the contention of counsel for defendants that even though the parties suing in a cause are not wholly the same that were sued some time before in another proceeding, still if the same subject matter 20 was passed upon, the matter is settled, because of necessity the decision will have to be the same in the later trial where it turns upon exactly the same questions of law.

This plaintiff in our opinion has had his full day in Court. He was ousted and dispossessed by the judgment and order of the Supreme Court of the Island, and every question that it would be pos-

sible to raise now was as we see from the transcript of record before us raised in the suit which resulted in that judgment.

As to the plea of res adjudicata in this sort of a case see Sentencia No. 358 Supreme Court of Spain, October 6, 1884, volume 56 Jurisprudencia Civil, where it was held that:

"Although it is true that law 20, title 22 of the Partida 3, establishes that the principle of res judicata does not apply to persons who have not been party to the trial, it is also true that from this rule is excepted cases where persons plead the same action with the same object, invoke the same rights, and base their pretensions on the same titles so that the judicial situation of the parties is identical in both instances."

See also Bank of Kentucky vs. Stone, 88 Federal 393-4, and citations which has some analogy.

It would be useless to have a further hearing on this plea as requested by counsel for defendants, because we are satisfied that the matter has been fully settled in the insular courts during a protracted series of lawsuits, arbitrations, appeals, etc., etc., that has lasted more than seventeen years and the remedy is not here at this time. The plea will therefore be sustained and the complaint dismissed with costs, and it is so ordered.

B. S. RODEY, *Judge.*

(*Journal Entry July 31, 1908.*)

No. 456.

JUAN MARTINÓ GONZALEZ
vs.
LEON RAMOS BUIST et al.

This cause having been heretofore duly submitted to the Court for trial under stipulation, without the intervention of a jury, and the Court having taken a portion of the evidence, and an issue having then been raised on the plea of res adjudicata of the defendants, and the Court having duly considered the same, on this day files its opinion in that behalf, and in accordance therewith it is:

Ordered and adjudged that the said plea be, and the same hereby is, sustained, and that the said cause be, and the same hereby is, dismissed with costs against the plaintiffs, and that the defendants have execution therefor.

It is further Ordered that because of the absence of counsel for plaintiffs in the United States, the making of this order shall not prejudice the plaintiffs in any of their rights in the premises to proceed further in the cause until the first day of November, 1908, or until five days after the sooner return of their counsel T. D. Mott, Jr., Esq., to Porto Rico.

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*Journal Entry, March 23, 1909.***In re Continuance of Cases.**

And now, on this 23rd day of March, this being the last day of the October, 1908, Term of Court, in this District, it is:

Ordered that any and all matters not finally determined or settled and rights which would or might be lost by the lapsing of the term, are hereby continued until the next term, to all intents and purposes as fully as if the number- and titles of the same were herein set out.

(Signed)

B. S. RODEY, *Judge.*23 *Journal Entry, October 9, 1909.***In re Continuance of Cases.**

And now, on this 9th day of October, this being the last day of the April, 1909, term of Court in this District, it is:

Ordered that any and all matters not finally determined or settled and rights which should or might be lost by the lapsing of the term, are hereby continued until the next term, to all intents and purposes as if the numbers and titles of the same were herein set out.

24 *(Petition for Appeal. Filed Oct. 12, 1909.)*

JUAN MARTINO GONZALES, Plaintiff,
vs.

**LEÓN RAMOS BUIST, JESUS RAMOS BUIST, ANTONIA RAMOS BUIST,
CLEMENCIA RAMOS BUIST, and BELEN RAMOS BUIST, Defendants.**

Petition for Appeal.

To the Supreme Court of the United States:

The above named plaintiff, Juan Martino Gonzales, conceiving himself aggrieved by the order and final judgment made and entered on the 31st day of July, 1908, in the above entitled cause, wherein and whereby it was ordered and adjudged that the plea of res judicata interposed by the defendants be and the same was sustained, and the complaint of the plaintiff be and the same was dismissed, does hereby appeal from said order and judgment to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith and herein, and prays that this appeal may be allowed on the giving of a bond for costs in a sum to be fixed by the Court, and that the findings of fact and conclusions of law may be filed herein as of the — day of October, 1909.

Dated this 12th day of October, A. D. 1909.

**T. D. MOTT, JR.,
Attorney for Plaintiff.**

(Assignment of Errors. Filed Oct. 12, 1909.)

JUAN MARTINO GONZALES

vs.

LEON RAMOS BUIST, JESUS RAMOS BUIST, CLEMENCIA RAMOS BUIST
and BELEN RAMOS BUIST, Defendants.

Assignment of Errors.

Comes now the plaintiff in the above entitled cause, by his attorney, T. D. Mott, Jr., and assigns the following as the errors committed by the Court aforesaid in the course of the proceedings in said cause:

I.

The Court erred in holding and considering as evidence the arguments and oral statements of counsel for the respective parties, and also in holding and considering as evidence the briefs and written statements of facts together with exhibits annexed thereto filed by counsel of the respective parties.

II.

The Court erred in proceeding to determine, and in determining, the plea of the defendants without receiving and considering evidence in support of the same, or against the same; and the Court also erred in refusing to permit such evidence to be offered.

III.

The Court erred in considering any evidence on the said plea and particularly the record in the former suit of Antonio Ramos
26 Mencos vs. Manuel Diaz Caneja and the judgment rendered therein, as such evidence was not offered or admitted in the presence of the plaintiff or his counsel and no opportunity was afforded counsel for plaintiff to object to the admission of such evidence.

IV.

The Court erred in not affording, and in refusing, plaintiff any opportunity to object to the admission in evidence of the record and judgment in the former suit of Antonio Ramos Mencos vs. Manuel Diaz Caneja.

V.

The court erred in receiving and considering any evidence on the plea of the defendants without first affording plaintiff an opportunity to object to the admission of such evidence and particularly the record and judgment in the former suit of Antonio Ramos Mencos vs. Manuel Diaz Caneja.

VI.

The Court erred in holding that there was any evidence before it upon the plea of res judicata interposed by defendants; and also in holding that there was before it sufficient evidence to pass upon and determine the aforesaid plea.

VII.

The Court erred in holding and deciding that for the purpose of determining the plea of res judicata no further evidence or proof was necessary than the briefs of respective counsel with the exhibits attached to the same.

27

VIII.

The Court erred in holding that the former suit of Antonio Ramos Mencos vs. Manuel Diaz Caneja and the judgment therein rendered has the force of and is res judicata as against the claims set up by plaintiff in his complaint herein against the defendants.

IX.

The Court erred in sustaining the plea of the defendants of res judicata; and also in dismissing the complaint of plaintiff herein.

X.

The Court erred in entering judgment in favor of the defendants and against the plaintiff.

XI.

The Court erred in entering judgment in said cause.

Wherefore, the said Juan Martino Gonzalez, plaintiff in error, prays the Honorable, the Supreme Court of the United States, to examine and correct the errors assigned, and for a reversal of the judgment of the District Court of the United States for Porto Rico entered in the above entitled cause.

T. D. MOTT, JR.,
Attorney for Plaintiff in Error.

28 (*Order Allowing Appeal. Filed and Entered Oct. 26, 1909.*)

JUAN MARTINÓ GONZALES, Plaintiff,
vs.

LEÓN RAMOS BUIST, JESUS RAMOS BUIST, ANTONIA RAMOS BUIST,
Clemencia Ramos Buist, and Belen Ramos Buist, Defendants.

Upon motion of T. D. Mott, Jr., Esq., counsel for the above named plaintiff, and on filing the petition of said plaintiff, Juan Martino Gonzales, for an order allowing appeal, together with an assignment of errors,

It is ordered that an appeal be and is hereby allowed to have reviewed in the Supreme Court of the United States, at Washington the judgment heretofore entered herein and that the amount of bond on said appeal be, and hereby is, fixed at Three Hundred Dollars (\$300).

Signed this 26th day of October, 1909.

B. S. RODEY,
*Judge of the District Court of the
United States for Porto Rico.*

JUAN MARTINO GONZALES
vs.
LEÓN RAMOS BUIST et al.

Findings of Fact and Conclusions of Law.

A final decree in favor of defendants and against the plaintiff having been heretofore rendered in this cause and the plaintiff, Juan Martino Gonzales, having entered his appeal from said final decree to the Supreme Court of the United States, this Court now here, upon application of said appellant, makes the following findings of fact upon which it based its said final decree.

I.

The said plaintiff and defendants, being each properly in court by their respective attorneys, agreed and stipulated in writing that they would waive a trial by jury in the above entitled cause and that the issues in said cause should be heard and decided by the Court alone, without the aid of a jury, and that the Court should try and decide all issues of fact, as well as of law, involved in said cause, after hearing the evidence in the same.

II.

The trial of this cause thereupon coming on, the Court called upon the respective counsel for argument as to the question whether 30 or not the plea as to the matters in issue being res judicata should not be sustained. Thereupon such argument was had and the Court having heard counsel for the respective sides in that behalf, gave them until Monday the 13th of July, 1908, to file briefs and memorandum of authorities, after which the issue would be passed upon.

III.

That thereupon counsel for defendants, on July 13, 1908, filed, without first submitting the same to the inspection of counsel for the plaintiff, the following brief and statement of facts, with annexed exhibit:

"Defendant's Brief on Res Judicata.

"The plaintiff in this case brought this action in ejectment, for the purpose of recovering possession of the land described in the complaint.

"The defendants answered and also plead res judicata. The Court very properly decided to dispose of the question on res judicata, for if that plea is good then the case is ended.

"It is admitted that the land in controversy, and from which the plaintiff seeks to eject the defendants, is the identical land located in the Insular Court between these defendants and the grantor of the plaintiff herein, Manuel Diaz Caneja, and which land was adjudicated by the solemn processes of law to the defendants herein.

"In the Insular Courts the record is very voluminous, and it is our purpose not to bring to this court any more of that record than is necessary to establish thoroughly and clearly the efficacy of the

plea of res judicata presented herein by the defendants.

31 "Counsel for plaintiff contended that the record submitted here by the defendant's is not res judicata as against this plaintiff, because he was not a party to the suit in the Insular Court, and for the further reason that, although a cautionary notice was placed in the proper record long prior to the pretended purchase of this plaintiff, it was not binding upon him, because the notice was entered in the records of Rio Piedras, in place of having been entered in the records of Bayamón.

"This contention is the last ditch in which the plaintiff seeks to entrench himself against the plea of res judicata.

"We cannot regard the position taken by counsel for plaintiff as tenable, for two reasons:

"(1) The cautionary notice provided by Section 42 of the Mortgage Law, and Section 71 of the same Law, eliminates third parties in cases of this character, if a cautionary notice has been annotated, for the reason that under the decision of the Supreme Court the land properly belonged to Rio Piedras jurisdiction, in which the cautionary notice was entered.

"By reading the first paragraph of the judgment of the Insular Court, which is attached to the answer as an exhibit, Your Honor will see that the Insular Court adjudged 'that the ancient boundary line between Rio Piedras and Bayamón be restored, and that by this adjudication the land which prior to 1881 had all the time belonged to the estate San Patricio,' (the estate of the defendants) 'should be restored to the Ramos estate,' and necessarily to the Rio Piedras district.

"This was the contention. In the action referred to Caneja contended that the land was situated in the Bayamón Jurisdiction, and based his contention upon the fact that the Bayamón jurisdiction extended to the brook 'Margarita,' and that it was all 32 a part of the estate of 'Pueblo Viejo de Abajo.'

"It is true that the brook Margarita was the boundary line between the two districts, with the estate 'San Patricio' on one side

in the district of Rio Piedras, and the estate 'Pueblo Viejo' on the other side of the brook within the district of Bayamón.

"Now, by some hocus pocus, the course or bed of the brook Margarita was so changed that it transferred the land in dispute from the estate 'San Patricio' to the estate 'Pueblo Viejo,' and incidentally from the ownership of Ramos to the ownership of Caneja. How the course of the brook was changed, does not matter to this consideration, since it is clear that the Insular Court ordered that the land be restored to the original and natural channel of the brook in question.

"The language of the Insular Court is 'that Manuel Diaz Caneja shall regard as the boundary line of the estates 'Pueblo Viejo de Abajo' and 'San Patricio' the natural course of the Margarita creek' * * * to which position it must be restored' * * * 'the said Diaz Caneja to return to Ramos, now his Sucesión, the land usurped by him, calculated in about 80 acres' * * * which land was formerly possessed by the plaintiff,' the plaintiff there referred to being the Sucesión Ramos, the defendants now at bar.

"Later, at the top of page 3 of the Exhibit, we find that 'a notice was made in the' * * * 'register' * * * 'of Rio Piedras (describing the land) 'and further declaring that said land had 'from time immemorial been a part of San Patricio and belonged to Ramos, situated in Rio Piedras, Monacillo ward,' and in the second paragraph of this same page we find the Court ordering 'the 33 Marshal to proceed to carry out the judgment restoring the boundary line between the estates Pueblo Viejo de Abajo and San Patricio, to the natural course of the Margarita creek, as set forth in the judgment, and placing the plaintiffs (defendants in this action) in possession of the land,' etc.

"It is the opinion of counsel for defendants that they have placed within the possession of the Court sufficiently certified abstracts from the record of the Insular Court to demonstrate that the land in controversy before the Insular Court between Ramos and the plaintiff, and Caneja as defendant, is the same land that is now in controversy before this Court.

"We have also shown, by presenting certified copies of certain findings of fact, taken from the record of said trial in the Insular Court, that the rights of Caneja, that of his immediate grantee, his nephew, under the alleged transfer, were considered by the Insular Court before entering the judgment upon which we rely. These findings of fact are certified in Spanish and submitted as translated, the Spanish and the English being attached to this brief as Exhibit 'A.'

"The judgment of the Insular Court is very long, and its complete translation would be a great task and would not, in the judgment of the counsel for defendants, furnish this Court with much actual information, but would go more extensively into details that would not be of value in ascertaining the nature of the judgment of said Insular Court. However, counsel for defendants submits in English a more extensive abstract of said judgment as a part of the argument in this brief, at the same time submitting to counsel for plaintiff Martino that this summary is correct.

34 "Antonio Ramos, the father of the defendants, was the owner of the estate San Patricio, situated at Monacillo ward, Rio Piedras, made up of 760 acres of land, more or less, and bounded on the North by Rio Piedras river, which crosses the estate Puerto Nuevo, on the West by the Margarita creek, the property of Gutierrez del Arroyo, and that of Manuel Diez Caneja; on the South by the property of Geronimo Landrau, and on the East by the property of said Landrau and the said Rio Piedras river. This property herein described is registered in the Register of Property since the year 1881, having been acquired by Antonio Ramos as inheritance from his father in the year 1854.

"In the year 1881 Manuel Diaz Caneja acquired at a judicial sale the estate Pueblo Viejo de Abajo, situated in the municipality of Bayamón, made up of 800 acres, and bounded on the North by the estate Cataño, belonging to Angel Fernandez, and the sea; on the South by the property of the Sucesión Gutierrez del Arroyo, dividing the same the creeks Margarita and Santa Catalina; on the East by the property of the Sucesión Gutierrez del Arroyo, the estate San Patricio, of Ramos, the Margarita creek and Puerto Nuevo river; and on the West by the property of Angel Fernandez, that of Guillermo Latimer, and the property of the Sucesión Gutierrez del Arroyo. This property is registered in the Register of Property. The former municipal court of San Francisco district, San Juan, turned over to Diaz Caneja the said estate, bounded as hereinbefore stated.

"The Margarita creek is the boundary line of the municipalities of Rio Piedras and Bayamón, the estate San Patricio being, as stated, in the Rio Piedras district; and the estate Pueblo Viejo de 35 Abajo, of Diaz Caneja, on the Bayamón side.

"By reason of certain ditches which Diaz Caneja dug on the lands close to the Margarita creek, the natural course of this creek was diverted towards the southeast, that is, towards the Rio Piedras jurisdiction, and all of the land that remained towards the N. W. Diaz Caneja appropriated to himself, as being a portion of the Pueblo Viejo estate, and considered it as comprised within the Bayamón jurisdiction.

"In this manner Diaz Caneja appropriated to himself a tract of land made up of something like 80 acres, more or less, situated between the Margarita creek, in its natural course, on the west side of the Seborruco del Rey hill, the Puerto Nuevo river, the Emajagua bush, and the Yaguaza pond.

"Then Ramos sued Diaz Caneja in December, 1889, to recover the said tract and products yielded, and to restore the Margarita creek to its natural course, that is, from the north end of a 'Emajagua' bush, running through and between the hills Mala Tierra and that of 'del Rey,' on the side of the latter hill, which is a part of the San Patricio estate, in the direction of a heap of straw, where the waters spread over and run to the Puerto Nuevo.

"Whereupon the former District Court of San Juan entered final judgment in this suit the 29th day of July, 1900, ordering that Diaz Caneja restore the natural course of the Margarita river to the place

indicated by Ramos in his complaint, and to return to Ramos the said 80 acres (more or less) of land; and besides the said judgment provided that said Diaz Caneja shall consider as the boundary line between the estates Pueblo Viejo de Abajo and San Patricio the said

Margarita creek on the natural course herein stated.

36 "On the 4th of January, 1890, that is, a few days after said Diaz Caneja was summoned to answer Ramos' complaint, the said Diaz Caneja sold to his nephew Eduardo Gonzales Caneja, the said estate of Pueblo Viejo de Abajo, together with the 80 acres (more or less) that he took from Ramos' property, and the said sale he made for the consideration of \$1000, when, as a matter of fact, Diaz Caneja acquired the said estate for the sum of \$12,799. in the judicial sale hereinbefore stated.

"When Ramos filed his complaint in the former municipal court of San Francisco district, San Juan, he prayed the court (and the court granted it) that an annotation be made in the register of property of the purpose of his complaint, which was that the said 80 acres be returned to him, and the annotation was made in the register of property the 31st of January, 1890, on Folio 183, Vol. 2, of Rio Piedras.

"Before final decision was entered on this suit, and undoubtedly for the purpose of obstructing the effect of a judgment, if it should go against Diaz Caneja, his nephew, Eduardo Gonzalez Caneja, sold the said tract of land of 80 acres to one Martino, considering the same as a section detached from the estate Pueblo Viejo de Abajo, so as to be able to register the same in the register of property as land belonging to the municipality of Bayamón.

"That the same tract of land which Ramos asked for in his complaint, and which the Court ordered be returned to him, is the land that the Marshall turned over to Ramos' children the 4th of March, 1907, the same having been found in the jurisdiction of Rio Piedras, and is the tract of land now claimed by Martino in this suit, alleging that it is situated in the Bayamón jurisdiction, and is made up of

100, with which acts the said Manuel Diaz Caneja, his 37 nephew, Eduardo Gonzales Caneja, and their grantee Martino, expected to avoid the effect the judgment of July 29, 1900, confirmed by the Supreme Court of Porto Rico the 29th of June, 1906, which holds that the tract of land in question belongs to Ramos and is within the jurisdiction of Rio Piedras, the said Caneja having changed the boundary line 'Margarita creek,' which is the boundary line between the municipalities of Rio Piedras and Bayamón, and at the same time the boundary line between the 'San Patricio' estate, which is in Rio Piedras, and belongs to Ramos, and the 'Pueblo Viejo de Abajo' estate, which is Bayamón, and belongs to Diaz Caneja, or his grantee Martino.

"At the beginning of this brief we said that there were two points, and we have discussed point presented as number one. We now present number two.

"(2) The adjudication of the controversy between Ramos and Caneja was more than a dispute as to the ownership of a tract of land. It was the adjudication of the actual and legal boundary line

between Bayamón and Rio Piedras. That boundary line has been adjudicated and determined by the highest court in Porto Rico, and counsel for defendants are of the opinion that to attempt to establish another boundary would be *res judicata*. Stripped of all pretensions, the action here pending is a suit in which it is sought to have this court decree that the boundary line established by the courts of Porto Rico was wrong; and in some manner to induce this court to set aside the judgment of the courts of Porto Rico as to what constitutes the boundary line between Rio Piedras and Bayamón, and the ancient and present ownership of the land determined by that boundary line, by setting aside the judgment referred to and by such method alone, can this plaintiff hope 38 to be benefited by any decision at the hands of this Court.

"As to this proposition I submit a translation from the decision by the Supreme Court of Madrid, Case No. 358, of the 6th October, 1884, which is found in the *Jurisprudencia Civil*, Vol. 56, in the library of this Court.

"Although it is true that the Law 20, Title 22 of the *Partida 3*, establishes that the principle of *res judicata* does not apply to persons who have not been party to trial it is also true that from this rule is excepted cases where persons plead the same action with the same object, invoke the same rights, and base their pretensions on the same titles so that the judicial situation of the parties is identical in both instances, as held by the Supreme Court.—C. No. 358. 6th Oct. 1884."

"We also cite case of the *Bank of Kentucky v. Stone*, 88 Fed. 393-4.

"We cite this case because it cites and quotes the doctrine as laid down by the Supreme Court of the United States, and the one citation enables us to present the views of both courts. We think this case, and the case upon which it was based, applicable, and especially in the light and alongside of the decision of the Supreme Court of Spain above quoted. In the case last cited an action had been brought to adjudicate the validity of a tax. The Court held the tax levied to have been invalid and enjoined its collection. Afterwards an action was brought for the recovery of the same tax, but by virtue of a different authority. The case is not before counsel at

39 this time, but it may be cited either as a fact or illustrative of a fact, that in one instance the City of Louisville brought an action to collect a tax from this bank and the Court held the tax invalid. Afterwards the County in which Louisville is situated, brought a suit against the same bank for the collection of the same tax. In this latter case the plaintiff held that the first decision decreeing the tax invalid was not *res judicata*, because the present plaintiff was not a party to the suit; but the court held that the status of the tax itself had been finally adjudicated and that the question was at an end. So in the case at bar. The highest tribunal of Porto Rico having, after a most exhaustive trial and by a carefully prepared judgment, adjudicated the boundary of the land in question, an attempt to establish any other boundary becomes *res judicata*.

"But counsel says that we have 100 acres in place of 80 acres. We do not know. As far as we know, the tract of land has never been actually measured. We have the land as the same is described in the action referred to by the boundary then and there fixed. It was said to contain 80 acres, more or less. The Marshal placed us in possession of it under the description furnished him by the Court, and we contend that the description was right; but if it was wrong, and the Marshal gave us more land than the Court intended he should give us, no doubt the Judge of the Court that ordered the Marshal to execute the judgment will direct him to correct a mistake, if he made a mistake.

"Respectfully submitted,
(Signed)

"WILLIS SWEET,
"Of Counsel."

In the District Court of San Juan.

ANTONIO RAMOS, HOY SU SUCESIÓN, COMPUESTA DE LEON, JESUS,
ANTONIA, CLEMENCIA Y BELEN RAMOS,
vs.
MANUEL DIAZ CANEJA.

I, José E. Figueras, Secretary of this District Court, certify:—
That on the 29th day of July, the former District Court of San Juan entered a final judgment in this suit, according to the former system of procedure and that in said judgment are found the following "resultandos" (or findings) of fact:—

Third Finding. That in the replication the facts stated in the complaint are restated, amplifying and reasoning upon them, as an answer to those stated in the answer, and as a new fact it is added, that Diaz Caneja by a deed of the 4th of January, 1890, executed before Notary Mauricio Guerra, sells his nephew, Eduardo Gonzales y Caneja, the real estate "Pueblo" Viejo" another piece of real estate situated in the "Tortuga" ward, Rio Piedras, and along with a building thereon in the "Marina" ward, a house in this city, 37 shares of the "Sociedad Anonima del Credito Mercantil" and an obligation of the amount of one thousands six hundred and fifty (1,650) pesos; which deed was executed five days after Diaz was notified of, and assumed to answer, the complaint.

41 Eighth Finding. That Manuel Diaz Caneja presented the following documents together with his answer to the complaint:—1. A copy of a map which appears to have been made on the first of April, 1886, by surveyor Armando Moralez:—2. A certificate of the Municipal Court of Rio Piedras stating that in the trial of a misdemeanor (judicio de faltas) prosecuted by Ramos against Diaz Caneja on account of the latter's cattle straying on another's premises there appears an official letter of the Commander of the Navy, dated the 30th of March, '87, the substance of which is as follows: 'That while in the map of the port of San Juan there

are certain brooks that flow into the "Puerto Nuevo" river they are not named on account of being of little importance and in order to answer the question put by the Court witnesses were examined and it appears that in said river there is a brook known as "Quebrada Margarita," which is the third to the right of the river going up and which has two other small ones.—3. A certificate of Notary Mauricio Guerra stating that Diaz Caneja sold on the 4th of January, '90 the real estate situated in the Pueblo Viejo ward with other property to Eduardo Gonzales y Caneja.—4. A deed executed on the 24th of December, '81 by the Judge of First Instance of San Francisco in favor of Diaz Caneja transferring the ownership in the real estate which he bought at auction in the executory action of the Sucesión of Gutierrez del Arroyo against Ponte for the amount of 12,799 pesos 80 centavos, which real estate is 800 acres (cuerdas) more or less situated in the Pueblo Viejo ward, in Bayamón, with the buildings thereon bounded on the North with the already named (premises) "Cataño," belonging to Angel Fernandez, and the sea; on the South with the Sucesión of Arroyo being divided by the

brooks Margarita (Quebrada Margarita) and Santa Catalina;
42 on the East with the Sucesión of Arroyo, Ramos, brook 'Quebrada Margarita' and Puerto Nuevo river; and on the West with Angel Fernandez, Guillermo Latimer, Sucesión of Arroyo, and is recorded in the Register of Property.

Fourteenth Finding. That on motion of Ramos the following proofs (evidence) was brought into court:—1. A certificate of the commander of the Guardia Civil (Police) stating that on February 13, '88, the second steward of the ranch (hacienda) of Caneja, asked for help from the police station at Bayamón because he had to cut the grass on his lands and feared that he would be hindered, and the sergeant sent a pair of policemen to the spot and the cutting of the grass was had without opposition from anybody, and when near the end there appeared on the spot, Ramos together with the deputy (of the Marshal) for the ward and several other men, stating that the grass was his, that the policeman who believed Caneja was the owner of the grass noticing that both individuals claimed the right of the property asked the deputy who was the true owner of the grass and the latter answered that he did not know, believing however that it was Ramos on account of the length of time he had seen him (Ramos) in there: the policeman allowed Caneja to take away the grass because he assured them that he as the owner and Ramos declared that all would be settled in court. Ramos having complained to the Governor the facts were cleared up by an ensign of the Guardia Civil (police) and it appears that the land while it was in litigation was in possession of Ramos and the policemen went only to help Caneja on account of his petition and the credit which in their opinion he deserved as a peaceful citizen; not thinking for a moment that he (Caneja) would have the
43 courage of deceiving him by asking their help for the accomplishment of a punishable act and informing them falsely. There is also an official letter as to the fact that no evidence exists in the office of the commander of any prosecution having

been had on that account. Folios 554 to 561—2—Notary Guerra certifies in the deed of January 4, '90, that besides the real estate Pueblo Viejo to which the certificate indicated under No. 3 of the Eighth Finding has reference, Caneja sold Gonzales the following property: a piece of land of one hundred acres in the Tortuga ward, Rio Piedras;—a lot in the Marina ward, in this city, with a new story brick house, and another frame house and hut thereon: house No. 37 on Sol street, this city; thirty-seven shares of the Sociedad Anonima de Credito Mercantil 'of a nominal value of one hundred pesos each; and an obligation of one thousand and fifty pesos owing to him by José Fernandez Brignoni already due. The purchase price was: the real estate in Pueblo Viejo, one thousand pesos; the real estate in Tortuga three hundred pesos; the lot and house in the Marina ward six hundred pesos; the house on Sol street, five hundred pesos; the shares, fifty pesos each, and the obligation (pagare), four hundred pesos; amounting in all to four thousand six hundred and fifty pesos that the seller admitted he had received. Besides the value of the property the purchaser should have to recognize these censos (encumbrances) on the property known as Pueblo Viejo, five annuities the principal of which being: (1) six hundred and twenty-five (625); (2) three thousand eight hundred (3,800); (3) six hundred and fifty (650); (4) one hundred (100); (5) two thousand eight hundred and forty-two (2,842) pesos twelve (12) centavos, Spanish money; on the lot in the Marina ward, two thousand four hundred (2,400) pesos (Spanish money),

44 and on the house on Sol street five hundred and ten (510) pesos, divided in three annuities. In the sale of Pueblo Viejo there were included the marshy land to be filled by the purchaser, alleging that they were granted to the original owner of the property Don Severiano Xiorro, on the 8th day of May, 1759, on Folio No. 619 to No. 622.—three special powers of attorney which on the 4th of January of the year '90, and before Notary Guerra, was granted by Diaz Caneja to Miguel Gonzales Posada, to sell several properties, personal and real, which he (Caneja) owned in Spain, some obtained through purchase and some through inheritance, to the person set forth in the power of attorney and following the instructions that he may give him later, Folios 323 to 616.—4. A certificate from the Escribano San Juan to the effect that in the suit of Ignacio Diaz Caneja against Manuel Diaz Caneja for the collection of five thousand three hundred and twenty-eight (5,328) pesos, a judgment was entered on the 17th of December, '89, adjudging that the defendant should pay the said amount; and the latter having appealed to the Audiencia (now Supreme Court) by order of the 27th of January, '90, dismissed the appeal with the costs taxed on the appellant. Folios 627 to 630.—A certificate of the Escribano Garcia to the effect that in the executory action of Eduardo Gonzales Caneja against Manuel Diaz Caneja for the collection of nine thousand (9,000) pesos, interests and costs, an attachment was levied on the one-third ($\frac{1}{3}$) of the salary of the defendant as Canon (governor) of the Cathedral, he having alleged that he had no property. The document on which the execu-

tory action was prosecuted being a note signed on the first of July, '79, by Diaz Caneja and payable to Juan Feliu for the amount of nine thousand (9,000) pesos, with interest thereon at the 45 rate of one and a half (1½%) per cent per month, with interest thereon to be payable on December, '82 and endorsed to Gonzales Caneja: Folio 544.

"By request of the counsel for the plaintiff I issue this certificate and set hereunto my signature and seal of the Court on the 8th of July, 1908, at San Juan.

"JOSE E. FIGUERAS,
Clerk of the Court,
Per A. MARIN MARIEN."

IV.

That thereupon, on July 27, 1908, counsel for plaintiff filed, without first submitting the same to the inspection of the counsel for defendants, the following brief and statement of facts with annexed exhibit:

In the District Court of the United States for Porto Rico.

JUAN MARTINO GONZALES
vs.
LEÓN RAMOS BUIST et al.

Recovery of Land.

Statement and Brief on Plea of Res Judicata.

46 Plaintiff is suing to recover one hundred (100) acres of land which he claims to own and which are at present in possession of defendants who also claim to be the owners of the same.

Defendants, beside denying title in plaintiff and claiming it for themselves, have pleaded res judicata, and claim that this very same land was the subject of litigation between plaintiff's predecessor in interest and the defendants, which litigation was decided in favor of defendants by the District Court of San Juan, on July 29, 1900, and that this judgment was later confirmed by the Supreme Court of Porto Rico, on the 29th day of June, 1906.

Plaintiff does not deny, but admits, the above judgments, but claims that they are not binding upon him, nor can they in any way affect him.

Of course the burden of proving their plea rests upon the defendants.

At the hearing so far held no proof was presented by either side, but the Court has requested each side to present a statement of facts and brief of law—points for its information and so as to enable it to decide the merits of the plea, without the necessity of a lengthy hearing.

We presume that before the Court finally passes upon the plea it will require the presentation of evidence in support of the statements of each side, so as to properly get into the record the basis of the ruling; indeed, in no other way can a court of justice pass upon such a plea.

Facts.

On the 25th day of February, 1881, Manuel Diaz Caneja purchased at judicial sale a tract of land consisting of eight 47 hundred (800) cuerdas, more or less, together with a dwelling house and certain appurtenances, all lying and being in the barrio of Pueblo Viejo, Municipal District of Bayamón, as is fully set forth and described in a deed dated December 24th, 1881, executed by the Court of First Instance of San Francisco in the City of San Juan, Porto Rico.

The boundaries of the 800 acres as set forth in said deed are as follows:

"On the North by the property named Cataño of Don Angel Fernandez and by the sea (bay); on the South by lands of the estate of Don Ramón Arroyo being divided by the brooks Margarita and Santa Catalina;

"On the East by lands of the estate of Arroyo, Don Antonio Ramos, the 'Caño de la Quebrada Margarita,' and by the river of Puerto Nuevo;

"And on the West by Don Angel Fernandez, Don Guillermo Latimer, and by the estate of Arroyo from whom it is separated by the brook Santa Catalina."

We especially call the attention of the Court that the land described as being in the barrio of Pueblo Viejo, Municipal District of Bayamón, and that one of its eastern boundaries as given is "el caño de la Quebrada Margarita."

This eastern boundary is the whole crux of the question of the ownership of the land.

Hence the 800 cuerdas according to this judicial deed reach in an eastern direction as far as the "caño de la Quebrada Margarita."

This deed was duly recorded on December 23, 1882, in Vol. 38, of Archives 4th of the Municipal District of Bayamón, folio 224, property No. 188, Registration First.

(Documentary Proof No. 1.)

The eastern part of these 800 cuerdas, or a portion of about 80 cuerdas immediately adjoining the "caño" aforesaid, was all under water and marshy when Caneja took possession of the same. 48 But after a great deal of labor and expense he succeeded in draining this land and then planted it to malojillo and converted it into fine and valuable pasture land.

Ramos, the father of defendants, owned an estate named San Patricio to the east of the said 800 cuerda tract and from which it is separated by the caño of the Quebrada Margarita and also by the Quebrada Margarita.

(Documentary Proof No. 2.)

When Caneja had succeeded in reclaiming the 80 cuerdas as above stated, Ramos began to lay claim to them and to disturb Caneja in his possession of the same.

It was then that Caneja, in A. D. 1884, February 26, instituted a suit in the nature of what was known in the procedure of that time as an "interdicto para retener la posesion" against Ramos.

By agreement or stipulation of the parties this suit was submitted to three arbitrators, two of whom decided against Caneja and one in his favor. The Court of First Instance, before which the suit was pending, then entered judgment against Caneja, ordering and decreeing that he should accept and be bound by the decision of the arbitration. Caneja appealed to the "Audencia" and this latter tribunal revoked the judgment of the lower court.

It may be pertinent to here state that under the procedure as it then existed an interdicto was a summary proceeding in which only the right to the immediate (and *prima facie* right at that) possession was tried. It never took the place of the regular proceeding for the trial of title. In fact, title could only be tried by an "accion reivindicatoria." And in an interdicto whatever decision was rendered was without prejudice to the parties litigating the right of property in the corresponding or proper proceeding.

49 Thus it was that Caneja who being in possession sued out his "interdicto para retener la posesion" against Ramos, who was out of possession. The purpose of this was to secure Caneja against molestation in his possession, a sort of injunction. Ramos, of course, still retained the right to his "accion reivindicatoria" to try the title as he was out of possession. It was in the interdicto that the stipulation between the parties was made leaving the issues to arbitrators. These issues did not include the question of title so that the decision of the arbitrators could and did only comprehend the question of the *prima facie* right to the immediate possession. When the Audiencia revoked the judgment of the lower Court against Caneja, the decision of the arbitrators was all that remained of the suit.

After this things remained in *statu quo* for about a year, Caneja remaining in possession of the 80 cuerdas.

In December, 1889, Ramos commenced an action against Caneja the gist of which was "that Caneja be compelled to accept the decision of the third arbitrator under the former agreement." Three engineers were named as experts, one by each of the parties and the third by the Court, to decide the question of boundary and the natural course of the brook Margarita (not the Caño or inlet by that name) and this board of experts decided in favor of Caneja, but the Court held the parties were bound by the decision of the arbitrators and that it could not accept the report of the experts. This was the judgment of July 29, 1900. Ramos also prayed that he be de-

creed the owner of these 80 cuerdas as part of his estate San Patricio.

50 Judgment was rendered in this suit, as already stated, by the District Court of San Juan, on July 29, 1900, and affirmed by the Supreme Court of Porto Rico, on June 29, 1906.

Execution issued on March 4th, 1907, and the defendants were placed in possession by the Marshal of the District Court of San Juan of a tract of land including the 100 cuerdas, subject of the present suit, under the claim that all of them were included in the above judgments.

We admit that the 100 cuerdas claimed by plaintiff herein were included in said judgments, but deny that said judgments bind this plaintiff or are determinative of the question of title with respect to him.

We beg the Court to remember that the 800 cuerda tract of Caneja, with its eastern boundary "el caño de la Quebrada Margarita," etc., was recorded in the Municipal District of Bayamón.

That the estate "San Patricio" with its western boundary "el caño de la Quebrada Margarita," etc., was recorded in the Municipal District of Rio Piedras.

On the 31st day of January, 1890, an annotation or cautionary notice of the suit was recorded at the instance of Ramos at the margin of the following described property, at Folio 183, Vol. 2, of the Municipal District of Rio Piedras, Property No. 89, letter A, on a tract of pasture land of about 80 acres, etc., which from time immemorial are a part of "San Patricio" plantation, belonging to Ramos, situated in Rio Piedras, barrio of Monacillo, and bounded on the West by the property of Ramón Gutierrez del Arroyo, the property of Manuel Diaz Caneja, and the Margarita creek or brook; on the North and East by the Puerto Nievo river; and on the South by San Patricio plantation at a point where there is a well or pond known as the Yaguazas." This was not a decision. It was a notice of the claim which was being litigated. (See Exhibit "A" hereto attached).

51 Such was the cautionary notice placed on the registry.

But where was it placed? At folio 183, Vol. 2, of the Municipal District of Rio Piedras, under the entry and property number of the estate San Patricio. Would anyone intending to purchase a part of the 800 acre tract recorded and situated in the Municipal District of Bayamón, and examining the record title for flaws or claims be apt to look up a different property, with a separate and distinct record number, under a distinct entry in a different municipality? He is not bound to do so under the law; it is enough for him to receive the law's protection that he looked up, examined the record title of the property he purchases and finds on the record that the seller has power to convey to him, subject to any qualifications or limitations as he finds on the record at the entry place and property number of the one he purchases.

But before commencing our argument and brief let us finish with the facts and history of this case. On the 31st day of January, 1890, the above cautionary notice had been recorded as aforesaid,

but before that and on January 4, 1890, Manuel Diaz Caneja had sold to Eduardo Gonzales the whole of the 800 cuerda tract in Bayamón and this transfer had been duly recorded. It cannot be claimed that the cautionary notice affected him and he was the immediate grantee of plaintiff.

However, the suit of Ramos, plaintiff, against Diaz Caneja, defendant (the only two parties), continued to drag along until the lower court rendered judgment in favor of Ramos on the 29th day of July, 1900. Caneja appealed from the decision of the lower court and the Supreme Court of Porto Rico confirmed the judgment on June 29, 1906.

Nothing was done by Ramos (or his heirs, Ramos having died in —) to secure execution of said judgment or in any way 52 to put it into effect until March 4, 1907, when by virtue of a writ issued out of the District Court of San Juan, the Marshal of said Court placed "the heirs of Ramos" (these defendants) in possession of a tract of land including the 100 cuerdas, object of the present suit.

However, on the 18th day of January, 1907, Eduardo Gonzales had sold these 100 cuerdas to one Martino, the present plaintiff.

Eduardo Gonzales Caneja is a nephew of Manuel Diaz Caneja, but Juan Martino (this plaintiff) is not related to either of said gentlemen and has known Manuel Diaz Caneja for three or four years.

Neither Eduardo Gonzales, the grantor of plaintiff, nor plaintiff himself, was a party to the Ramos suit, so that, under the most favorable view for defendants, unless the recording of the cautionary notice by Ramos at Rio Piedras served as a lis pendens, this plaintiff cannot be held bound by said suit or its consequence.

It seems to us that having in mind our system of recording, the registry system with its rules and regulations which are laws continued in effect by Congress, (Foraker Act; Romeu v. Todd, 206 U. S., 357,) and the plain and explicit law and decisions applicable to this case (Mortgage Law, Romeu v. Todd) that the question of whether or not this plaintiff is bound by the judgments in the Ramos suit is one that is quite easy of solution.

The cautionary notice recorded by Ramos was not a cautionary notice either in its essence or in its form, nor such a notice as is required by the law.

"Each estate which is recorded for the first time in the registries shall be marked with a distinct and correlative number.

53 "The records corresponding to each estate (meaning each successive transfer or transaction) shall be marked by another correlative and special enumeration."

Article 8, Mortgage Law (parentheses ours).

"Every record made in the registry shall contain the following details:

(1) the nature, location, and bounds of the realty which is the subject of record, or which is affected by the interest recorded—etc.

Article 9, Mortgage Law.

"Cautionary notices shall be made in the same part of the book where the record would be made, if the right entered should be converted into a recorded right."

Article 75, Mortgage Law.

"A cautionary notice shall be null when the estate or interest entered, or the persons whom the entry concerns, or its date, cannot be identified therefrom."

Article 76, Mortgage Law.

"To indicate exactly the estates or rights which are the subject matter of the record, registers shall act in accordance with the provisions contained in Article 9 of the Law, subject to the following rules:

First:—The character of the estate shall be described, stating whether it is rural or urban * * *

Second:—The location of the rural estates shall be fixed by a statement of the district, sub-district, or any other name by which the place in which they are located is known, etc. * * *

Article 63, Mortgage Law Regulations.

Articles 74 and 75 of the Mortgage Law Regulations provide for further details in the manner and method of recording estates.

"Cautionary notices of their respective interests in the corresponding public registries may be demanded by:

(1) The person who enters suit for the ownership of the real property, or for the creation, declaration, modification, or extinction of any property right."

Article 42, Mortgage Law.

The person who brings the action for ownership, referred to in Case No. 1 in Article 42 of the law, may at the same time or subsequently request that a cautionary notice thereof be made, etc.

Article 91, Mortgage Law Regulations.

"Fifth:—If an entry of a suit for ownership is demanded, the date of the order permitting the action shall be stated, the object of the same, and the names of the plaintiff and defendant."

Section 5, Art. 126, Mortgage Law Regulations.

"The instruments mentioned in Articles 2 and 5 which are not duly recorded or entered in the registry cannot prejudice third parties," etc.

Article 23, Mortgage Law.

The foregoing citations from the Mortgage Law and its regulations present clearly the manner in which a record is made and some of its effects.

Thus when an estate is first recorded it is given a separate number, the municipal district in which it is situated is given, also the sub-district (barrio) and its boundaries, etc.

Article 63 Regulations.

55 And cautionary notices, lis pendens, etc., with reference to that estate must be recorded under the same property number as the estate and in the book or volume corresponding to the same municipal district as that in which the estate is situated and recorded.

Article 75, Mortgage Law.

A careful reading of Article 42 of the Mortgage Law will reinforce this point, for that Article says: "Cautionary notices of their respective interests in the corresponding public registries may be demanded," etc.

So it is not in any registry nor any place haphazard in the registry that the cautionary notice must be recorded, but at the corresponding place where anyone examining the status of the estate may see it. Thus one looking up property number 90 in the Municipal District of San Juan will look in the San Juan volume and run down all the entries recorded under number 90. He at once sees the status of the property. It would defeat the very purpose of the registry to compel him to look in any other municipal district, or in any other place than where the property is recorded; it would upset and change the whole system and make of the orderly and concise registry of to-day, which stands as a ready and certain guide, a confused and unreliable record of documents and titles which cannot but tend to insecurity and uncertainty.

The fundamental and essential idea of a cautionary notice, like a lis pendens in the States of the Union, is to warn third parties that though the record, as it stands, may show title in a person yet that title is being disputed and is the subject of litigation, and persons dealing with the record only do so at their peril.

56 It would therefore seem logical that the claimant and the record owner, in a cautionary notice as in a lis pendens, be different persons. It is absurd for a person in whose name the record title already exists but who may be suing for possession of a part of his property to place a cautionary notice against his own record title, because according to the system of registry in Porto Rico, so long as the record title is in his name, no one can gain recorded title excepting from him.

A owns an estate composed of 760 cuerdas in the Municipal District of Rio Piedras and his title to the whole of this tract was duly recorded. But B, an intruder, appears, takes possession of 80 of the 760 cuerdas. A sues to recover as owner, sets up his recorded title and prevails.

It is clear that under the Porto Rican system of registry the intruder had no record title to the 80 cuerdas, for these were already recorded in the name of A and included in the record of the 760 cuerdas; hence there is absolutely no necessity for A to make any cautionary notice, for whoever buys from B does not buy from the record owner and cannot acquire any rights.

But supposing that B has fraudulently succeeded in having title to the 80 cuerdas recorded in his name as a separate and distinct property from the 760 cuerda tract, then the record is made under

a separate property number, with a separate and distinct entry for this property. A sues to recover the 80 cuerdas as being part of his 760 cuerdas—where shall the annotation or cautionary notice be made on the record, at the place where the entry of B's title to the 80 cuerdas appears, or at the place where the 760 cuerdas are recorded? To state the case is to anticipate the answer, for 57 there can be but one sensible and reasonable answer.

It must be borne in mind that the purpose of cautionary notice is as much to protect innocent third parties dealing with the record owner as to protect the claimant himself. Hence if A places a cautionary notice on his own title, at the place where his 760 cuerdas are recorded, he in no way warns the innocent third parties who may deal with B under the latter's record title. Any prospective purchaser examining B's title would be utterly unable to learn from the record of the existence of A's suit.

A's cautionary notice would in effect amount to this: "I am the record owner of this 760 cuerda tract but B claims to own certain 80 cuerdas of it, is in possession of them and I am suing him for them."

However, if the cautionary notice is placed upon B's title, where it logically belongs, then A's cautionary notice is in effect what it should be, to-wit, "B appears to be the record owner of these 80 cuerdas and is in possession of them, but I claim to be the owner and am suing to recover them, so I warn no one to deal with B excepting at his peril."

The essential difference between the two notices is obvious. This is precisely the case at bar. Eduardo Gonzales had record title to 800 cuerdas, was and had been in possession for seventeen years, and his grantor before him had been in possession nine years. Ramos who owned an adjoining estate of 760 cuerdas and to which he had record title claims that 80 cuerdas of the 800 cuerdas, of which Gonzales is in possession under his record title, belong to him, Ramos, under the latter's record title and sues the grantor of Gonzales before the latter buys the 800 cuerdas. But instead of placing

58 a cautionary notice upon the record of the 800 cuerda tract in order to show third parties that 80 cuerdas of this were in dispute and a suit was pending as to the same, Ramos places the cautionary notice upon his own record title to the 760 cuerda tract, the two tracts being in separate and distinct municipal districts.

Can it be said that one who never knew anything about the suit and who saw Gonzales in possession and had so seen him for many years and now purchases 100 cuerdas of the 800 cuerda tract, in which 100 cuerdas are included the 80 cuerdas in dispute, makes the purchase with proper legal notice of the pendency of the suit so as to be bound by its results? We think not and confidently submit the proposition to the Court.

The Supreme Court of the United States said, in speaking of cautionary notices: "That the essence of the statute was the protection of innocent third parties dealing with the recorded owner when no cautionary notice had been given is obvious."

Romeu v. Todd, 206 U. S. 365,

and continued the Court in the same case:

"As peradventure, then, the suit and the decree took from the recorded owner the ownership upon which necessarily the innocent third party must have relied, we think it clearly follows that the cautionary notice required by the provisions of the Mortgage Law was essential to affect the innocent third party."

We submit that the case quoted from, *Romeu v. Todd*, is absolutely determinative of the necessity of cautionary notices to bind third parties acting in good faith; and we as confidently submit that the so-called cautionary notice placed by Ramos upon his own property was no cautionary notice at all.

59 We have thus dealt with the question so as to endeavor to demonstrate to the Court the inefficiency and nullity of the so-called cautionary notice as an absolute proposition.

There still remains another phase to be considered—the cautionary notice may in and of itself be all that it should be and yet not have any effect upon the rights of this plaintiff.

On January 4, 1890, Manuel Diaz Caneja sold the 800 cuerda tract to Eduardo Gonzales; the so-called cautionary notice was not presented at the registry until the 27th day of January, 1890, and recorded four days later or on January 31st.

Caneja was summoned in this suit brought against him by Ramos on December 31, 1889, but had already made every arrangement to sell to Gonzales, and all that remained to be done was to execute the deed, for which orders had already been given to the notary. The deed was executed January 4, 1890, as aforesaid, without Gonzales having any knowledge of the pendency of the Ramos suit as we are prepared to show.

We therefore claim that Gonzales was not affected by the pendency of the suit and took title free from the litigation or its result.

Now, if Gonzales, the immediate grantor of plaintiff, was unaffected by the litigation and enjoyed and held his title free from the consequences of any *lis pendens* or suit, we submit that this same title he transferred in 1907, or seventeen years later, to this plaintiff. As a matter of fact, after Caneja sold to Gonzales, Ramos asked the Insular Court, in an additional pleading, to cancel and declare void the deed to Gonzales so far as the same affected him, Ramos.

60 But the Court did not accede to this request and as Gonzales was never made a party to the Ramos suit we do not see how either in that suit or in any other to which he was not made a party any title belonging to him could be cancelled or declared void.

But it may be claimed that Gonzales is not an innocent third party, and collusion between him and Caneja may be charged. Fraud is a matter of proof not of presumption and as yet there is no proof of this fraud. We are therefore now entitled to the presumption of innocence although we stand ready to prove it. So, then, our contention may be re-stated in a few words:

The so-called cautionary notice on the finca San Patricio was null

and void, in fact, was no cautionary notice at all, and could not affect innocent third parties purchasing property recorded elsewhere.

Even though this be not so yet as the cautionary notice was made after Gonzales took title it could not affect him nor his successor in interest.

Counsel for defendants, at page 2 of his brief, claims that the annotation was properly made in Rio Piedras, because the Supreme Court later decided that the land belonged to the Rio Piedras jurisdiction. As we will see later neither the Supreme Court nor the trial court decided nor undertook to decide the question of the boundary between the two jurisdictions of Bayamón and Rio Piedras. There is not one single word in either of said decisions which can justify the assertion that this boundary was decided. All that was decided

61 was that the 80 cuerdas, according to the decision of the arbitrators by which both Ramos and Caneja were bound, belonged to Ramos with the boundaries that appear in the cautionary notice.

Now, of course, as Ramos did not claim to own any land in Bayamón but only in Rio Piedras, the argument is that the Court, in deciding in favor of Ramos, necessarily decided the land to be in the Rio Piedras district. To this we answer that the arbitrators had to confine themselves to the conditions and terms of the agreement of arbitration, and these were to determine the natural course of the brook Margarita. If this natural course was found to be the west of a certain hill called Seborruco del Rey, then Ramos won; but if found to be at the east of this hill, then Caneja won.

The arbitration found this natural course to be to the west of said hill and hence decided in favor of Ramos. The Court held this decision of the arbitrators binding upon the parties and adjudged that Caneja restore the brook to its natural course and that he return to Ramos the 80 cuerdas which were formerly possessed by Ramos and the boundaries of which appear in the cautionary notice.

No where is it decided what and where is the boundary line between the two jurisdictions.

But to say that the annotation was properly made in Rio Piedras, because from the decision of the Court we may infer that the Court must have held the land to be in that district is to beg the question. For that very same land is also recorded in the District of Bayamón, and hence the annotation to the cautionary notice should also have been made on the record there, so that a person purchasing according to that record should be properly warned. Ramos knew that this record existed in the Bayamón district and his attorney, who

62 was no less a person than the present Chief Justice of the Supreme Court of Porto Rico, first attempted to have the cautionary notice made in Bayamón, but this annotation was refused by the Registrar on the ground that the property no longer belonged to Caneja and had already been sold to Gonzales. It was then that Ramos, in order to at least be able to some day claim the existence of a shadow of a cautionary notice, had it recorded at Rio Piedras.

On page 3 of defendants' brief we again meet the assertion that the brook Margarita was the boundary line between the two jurisdictions.

tions of Bayamón and Rio Piedras. It may be a fact but the Insular Courts have never said so.

At the top of the same page 3 of the brief counsel for defendants attempts to set forth the position or contention of Caneja in the old suit. We will say that Caneja contended that his estate was situated in the Jurisdiction of Bayamón and that the eastern boundary of his estate extended to the Caño of the Quebrada Margarita and also to the brook (Quebrada) Margarita. The Caño and the quebrada (inlet and brook) are two very distinct and different things, for while man may change the course of one he cannot, except by stupendous labor change the other or obliterate it.

At the time that the suit of Ramos against Caneja was commenced the brook Margarita ran to the west of the hill Seborruco del Rey, but Caneja contended that its natural course was 300 or 400 yards to the east of this toward Rio Piedras; whilst its then actual course was what Ramos claimed to be the proper and natural one. It is clear that only by moving the brook eastward could Ramos be prejudiced and Caneja be the gainer, but Caneja claims that the very reverse of this had occurred and Ramos never claimed that the brook

ever ran further to the westward, which on account of hills 63 was impossible, than it was then running. From the very

nature of the ground any change in the course of the brook must necessarily result to the advantage of Ramos. Hence the third paragraph on page 3 of defendants' brief is an incorrect statement. Although not properly before this Court we may nevertheless advert to the ridiculous feature of the decision of the Insular trial Court, when it ordered Caneja to restore the brook Margarita to its former and natural course. The Court had decided that the natural course was to the west of the Seborruco del Rey. It was then running there and it was not claimed it ever had run further to the west, and no change or restoration was necessary to have the brook run in its natural channel. Any change would take it out of its so-called natural channel.

On page 4 of the brief defendants advert to the wording of the cautionary notice. "From time immemorial a part of San Patricio * * * belonged to Ramos, situated in Rio Piedras, Monacillo ward." This is the cautionary notice, the description of the land as given by Ramos and is not the language of any court nor does it form part of the decision of any court.

On the same page 4 of their brief defendants claim that the Insular Court considered the rights of Gonzales, nephew of Caneja, under the alleged transfer to the latter, before it entered judgment. We flatly say that the Court decided nothing as to the nephew's rights and that the latter was not in court, was not a party to the suit. The Court did say in its decision that it was not necessary to cancel the deed to Gonzales as a cautionary notice existed on the registry when the latter bought the land, and hence refused to order the cancellation. But the Court was evidently suffering under a

64 mistake when it said this, as Gonzales had bought on January 4, 1890, and had his title recorded on January 6, 1890, while the cautionary notice was made on January 27, 1890.

But that is of no consequence at this point, for the Court left the deed to Gonzales just as it was, a subsisting, actual deed.

The abstract of the judgment of the Insular Court, as presented on pages 5, 6, 7 and 8 of defendants' brief, is mistaken in a great many respects, and to enumerate these mistakes now would extend our statement and brief to undue length. Points are therein claimed to have been decided which we claim were never the subject of the Court's decision, and facts are therein stated which we claim and hope to prove are totally at variance with the actual facts. One fact, for instance, stated on page 6, is that the course of the brook Margarita was diverted towards the southeast. This had never occurred and Ramos himself made no such claim. Caneja had diverted it to the northwest and Ramos then claimed that that was its natural course, claiming all land to the eastward, while Caneja claimed all land between where the brook then ran and where it formerly ran.

Again, it is not decided, as is stated on the same page 6, that the brook Margarita is the boundary line between the municipalities of Rio Piedras and Bayamón.

Again, on page 7 of defendants' brief, it is stated that Caneja sold to Gonzales for the consideration of only \$1000, together with the 80 cuerdas, etc. The deed of Gonzales, which we are prepared to show to the Court, will disclose something entirely different. It will show that Caneja sold his estate of Pueblo Viejo but not "together with the 80 cuerdas, etc." but including the 80 cuerdas not in sepa-

rate and express words, but only as the 80 cuerdas were included in the whole description of Pueblo Viejo, and said deed will show that besides paying \$1000 cash Gonzales assumed some \$9000 of obligations including the obligation to transfer the western 400 cuerdas to his brother, Marcos Gonzales.

The second point of defendants' brief has no foundation either in fact or in law. We repeat the Insular Court has never adjudicated the boundary line between Rio Piedras and Bayamón.

As a matter of fact the taxes on these 100 cuerdas have always been paid in Bayamón, at first as a part of the 800 cuerda tract and then later as a separate tract.

But no where in the decision of the Insular Court can such an adjudication be found.

But admitting that the alleged adjudication existed, would it be binding on persons not parties to the suit? on either of the municipalities, for example, which are certainly interested as the question affects their rights for the collection of taxes on certain properties and in other respects.

Neither the decision of October 6, 1884, of the Supreme Court of Madrid, Case No. 358, Vol. 56, of the Jurisprudencia Civil, nor the case of Bank of Kentucky vs. Stone, 88 Fed. 393, cited by defendant, are pertinent to the question at issue. These cases are not at all in point or in any way analogous to the present case.

Neither of said cases involve the title to real estate. The case decided by the Supreme Court of Madrid involved the construction of a will and determined the rights of inheritance thereunder, as to whether it was the collateral or direct heirs that should enjoy certain rights.

66 In Bank vs. Stone the validity of a tax was involved. The question was whether the Bank was liable for taxes other than those mentioned in a certain law. The Bank claimed that because of a contract it had with the State neither the State nor any of its agencies could impose upon it other taxes. The court having decided the question in one suit, it was held to be res judicata in a subsequent suit against the Bank by another agency of the State. It simply involved the establishing of a contract.

Presuming that the Court will read for itself both of these causes we will not describe them further.

But a suit involving title to real estate is a very different thing under the law of Porto Rico and under this law, which binds this Court, in order that a decision in such a case may have the force of res judicata against a person not party to the suit, but who acquires record title pendente lite, even from one who is a party to the litigation, a cautionary notice of the pendency of the suit must be made at "the proper place in the proper registry under the title of the property which is the subject of the suit."

This statutory law of Porto Rico limits the rule as to who should be considered privies in suits involving title to real property for the purpose of being bound by the result of the suit. But these points are fully explained by the Supreme Court of the United States in *Romeu v. Todd* already cited and we will not dwell further on them.

But in Spanish as in American law certain unities must exist to sustain a plea of res judicata.

"Para que lo resulto ejecutoriamente pruduzca la excepcion de cosa juzgada en otro que se promueva despues, y sea por tanto procedente dicha excepcion, es indispensable que exista entre ambos pleitos identidad de personas, cosas y acciones, requisitos que han de concurrir conjuntamente, de suerte que si falta alguno de 67 ellos ya no puede prosperar dicha excepcion."

Manresa Com. Ley de Eng. Civil, Tomo 3, p. 10', 109;

Sentencias Tribunal Supremo Marzo 5, 1866;

" " " Diciembre 31, 1866;

" " " Octubre 20 & Nov. 23, 1882;

" " " Junio 15, 1885,

and the Civil Code of Porto Rico says:

SECTION 1219. In order that the presumption of res adjudicata may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes and persons of the litigants and their capacity as such.

In questions relating to the civil status of persons and in those regarding the validity and nullity of testamentary provisions, that presumption of res judicata shall be valid against third persons, even if they should not have litigated, etc., etc.

It is true that between Caneja and this plaintiff the relations of causa habiente, or privy, exists, but for the purpose of res judicata in a suit involving title to real estate this relation is severed by the express provision of the Mortgage Law. Hence, one of the unities

necessary to support this plea, to wit, "identity of parties," is missing and the plea should be overruled.

In order to make more intelligible some points and facts contained in this statement and brief, as well as to present to the Court in a clear way, the points wherein we differ with counsel for defendants as to the facts involved, we respectfully ask the Court to grant us an oral hearing upon our statement and brief.

68 Respectfully submitted,
(Signed)

T. D. MOTT, JR.,
Attorney for Plaintiff.

Translation of Exhibit "A."

At folio 183, Vol. 2, of the District of Rio Piedras and under property No. 89, after the eleventh inscription, the following annotation is found:

"A. Cane plantation named 'San Patricio' of the barrio of Mona which was ordered upon the aforesaid 80 cuerdas, approximately, of appears in the first inscription under this number, to which I hereby refer: and of which plantation or estate only 80 cuerdas, more or less, of land are the object of the inscription, and which are equivalent to 31 hectares, 44 areas and 31 centiareas; said piece of land being situated on the boundary between this plantation and the estate Pueblo Viejo Abajo, which is possessed by the priest, Diaz Caneja, in Bayamón; and this estate is bounded on the West by lands of the Sucesión of Don Ramón Gutierrez del Arroyo, the priest Don Manuel Diaz Caneja and the Quebrada (brook) Margarita; on the North and East by the river Puerto Nuevo; on the South by lands of the same plantation, San Patricio, where there exists a pond called de las

69 Yaguasas. The whole of this plantation or estate is found affected by the liens mentioned by the preceding inscription

numbers one and eleven. In the Court of First Instance of this City and Scrivener's Office of Don Maximino Aybar there exists a declarative suit of Greater Import established by Don Antonio Ramos Mencos against the priest Don Manuel Diaz Caneja, for the fulfillment of a contract, and also the title for lands of this number, or the 80 cuerdas the approximate object of this annotation and in the records of which suit at the petition of Don Antonio Ramos Mencos, the annotation, of the complaint was ordered on the 25th day of the present month, a writ being issued directed to this Registry for the making of said annotation. In virtue of it I make the annotation which was ordered upon the aforesaid 80 cuerdas, approximately, of land at the instance of the Court of First Instance of this Capital. All the foregoing appears from the Registry and from the said writ issued under date of the 25th instant by the Judge of First Instance of this City, Don Nicolas Lillo Roda, before the Scrivener Maximino Aybar and which was presented in this Registry on the 27th instant, at one o'clock P. M., as appears from entry number 605, Folio 180, over, Vol. 8 of the Day Book, and one of its copies being filed under number three in the jacket containing judicial documents.

San Juan, Porto Rico, January 31, 1890.

(Signed)

JOSÉ IGNACIO BEYENS.

V.

That with the exception of said briefs and statements so filed as aforesaid and the exhibits attached thereto, no other or further evidence was received, submitted or considered in this cause, and no further hearing of this cause was had.

VI.

That counsel for plaintiff requested the Court for a further hearing and that evidence be taken by the Court in support of the statements made by counsel for plaintiff and counsel for defendant in their respective briefs, and that the Court refused to allow any further evidence in the premises other than that contained in the Exhibits attached to said briefs, and the relief map presented at the hearing.

From the facts above stated the Court draws the following conclusions of law:

I.

That there is before the Court in the way of Exhibits filed a relief map, etc., with the written briefs and arguments of counsel, set forth in findings of fact Nos. III and IV, sufficient evidence to enable the Court to pass upon and determine the plea of *res adjudicata*.

II.

That for the purpose of determining the said plea of *res adjudicata* no further proof, evidence or hearing is required by the Court.

III.

That the claim of the plaintiff set up in his complaint is not available to him, because the same subject matter was involved in the suit between Antonio Ramos Mencos versus Manuel Diaz Caneja in the District Court of San Juan, which suit was finally determined by the said Court in favor of these defendants or their privy in interest, by final judgment entered July 29, 1900; which judgment was confirmed by the Supreme Court of Porto Rico on June 29, 1906, and the said judgment now has all the force of *res adjudicata* as against the claims of the plaintiff set up in his complaint herein.

The foregoing statement of facts, in the nature of a special verdict, and the above conclusions of law having been submitted by counsel for the respective parties and approved by the Court, the same is signed and certified, at San Juan, Porto Rico, this 26th day of October, 1909, and the same with a copy of the Court's opinion in the case will be transmitted to the Honorable the Supreme Court of the United States according to law.

B. S. RODEY,
*Judge of the District Court of the
United States for Porto Rico.*

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(Bond. Filed October 29, 1909.)

In the District Court of the United States for Porto Rico.

JUAN MARTINO GONZALES, Plaintiff,
vs.LEÓN RAMOS BUIST, JESÚS RAMOS BUIST, ANTONIA RAMOS BUIST.
Clemencia Ramos Buist, and Belen Ramos Buist, Defendants.

Bond on Appeal.

Know all men by these presents: That we, Juan Martino Gonzales, as principal, and Marcos T. Caneja and Eduardo G. Caneja, as sureties, are held and firmly bound unto León Ramos Buist, Jesús Ramos Buist, Antonia Ramos Buist, Clemencia Ramos Buist, and Belen Ramos Buist, defendants above named, in the sum of Three Hundred (\$300.00), to be paid to the said León Ramos Buist, Jesús Ramos Buist, Antonia Ramos Buist, Clemencia Ramos Buist, and Belen Ramos Buist, their executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the 28th day of October, A. D. 1909.

Whereas, the above named plaintiff, Juan Martino Gonzales, has obtained from the above mentioned Court an order allowing an appeal to the Supreme Court of the United States, to reverse the judgment in the above entitled cause, by the District Court
73 of the United States for Porto Rico.

Now, therefore, the condition of this obligation is such that if the said Juan Martino Gonzales shall prosecute his said appeal to effect and shall answer all damages and costs that may be awarded against him, if he fail to make his plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

J. MARTINO.	[SEAL.]
MARCOS F. CANEJA.	[SEAL.]
EDUARDO G. CANEJA.	[SEAL.]

Approved this 29 day of October, A. D. 1909.

B. S. RODEY,
Judge of the District Court of the
United States for Porto Rico.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Marcos T. Caneja and Eduardo G. Caneja being first duly sworn each for himself and not one for the other deposes and says that he is one of the sureties whose name is signed as such on the foregoing bond; that he has visible property in the Island of Porto

Rico subject to execution of the value of Three Hundred Dollars over and above all debts and liabilities.

MÁRCOS T. CANEJA.
EDUARDO G. CANEJA.

Subscribed and sworn to before me this 28th day of Oct. 1909.

[COURT SEAL.]

JOHN L. GAY,

Clerk Dist. Court of U. S. for P. R.,

By C. A. DAVIDSON,

Deputy.

74 In the District Court of the United States for Porto Rico.

No. 456. Law.

JUAN MARTINÓ GONZALES, Plaintiff,
vs.

LEÓN RAMOS BUIST, JESUS RAMOS BUIST, ANTONIA RAMOS BUIST,
Clemencia Ramos Buist, Belen Ramos Buist, Defendants.

I, John L. Gay, Clerk of the District Court of the United States within and for the District of Porto Rico, do hereby certify the foregoing seventy-three typewritten pages, numbered from 1 to 73, inclusive, to be a full, true, and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court this twenty-fourth day of November, A. D. 1909.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
*Clerk District Court of the United States
for the District of Porto Rico.*

75 In the District Court of the United States for Porto Rico.

JUAN MARTINÓ GONZALES, Plaintiff,
vs.

LEÓN RAMOS BUIST, JESUS RAMOS BUIST, ANTONIA RAMOS BUIST,
Clemencia Ramos Buist, and Belen Ramos Buist, Defendants.

Citation.

UNITED STATES OF AMERICA, ss:

The President of the United States to León Ramos Buist, Antonia Ramos Buist, Jesús Ramos Buist, Clemencia Ramos Buist, and Belen Ramos Buist, or their attorney, Willis Sweet, Esq., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the City of Wash-

ington, within sixty days from the date of this writ, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for Porto Rico, wherein Juan Martino Gonzales is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, this 26 day of October, 1909, and of the Independence of the United States the 76 133rd.

B. S. RODEY,
*Judge of the District Court of the
United States for Porto Rico.*

[Seal United States District Court for the District of Porto Rico.]

Attest:

JOHN L. GAY,
*Clerk of the District Court of the
United States for Porto Rico.*

Return on Service Writ.

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Writ on the therein-named Willis Sweet, Attorney for Leon Ramos Buist et al., by handing to and leaving a true and correct copy thereof with him as Attorney for Buist et al., personally at San Juan in said District on the 30 day of October, A. D. 1909.

H. S. HUBBARD,
U. S. Marshal.
JOHN L. HAAS, *Deputy.*

78 [Endorsed:] No. 456. Law. In the District Court of the United States for Porto Rico. Juan Martino Gonzales vs. Leon Ramos Buist, Jesus Ramos Buist, Clemencia Ramos Buist, and Belen Ramos Buist. Citation. Filed Clerk's Office, United States District Court. Nov. 2, 1909. John L. Gay, Clerk of the Court. Marshal's Fees: Service, \$2.00; Expenses, —.

Endorsed on cover: File No. 21,948. Porto Rico D. C. U. S. Term No. 181. Juan Martino Gonzales, appellant, vs. Leon Ramos Buist, Antonia Ramos Buist, Jesus Ramos Buist et al. Filed December 31st, 1909. File No. 21,948.

SUPREME COURT OF THE STATE OF ILLINOIS

October 1, 1911.

No. 181.

JOHN MARTIN CONNELL, Appellant.

LEON PARKS BROWN, JOHN PARKER BROWN, Appellee.
LEON PARKS BROWN, JOHN PARKER BROWN, Appellee.
LEON PARKS BROWN, JOHN PARKER BROWN, Appellee.

BRIEF of APPELLANT

E. H. SCOVILLE and J. R. F. DAVAGE,

Attorneys for Appellant.

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IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 181.

JUAN MARTINÓ GONZALEZ,
Appellant,

vs.

LEÓN RAMOS BUIST,
JESÚS RAMOS BUIST,
ANTONIA RAMOS BUIST,
CLEMENCIA RAMOS BUIST,
BELÉN RAMOS BUIST,
Appellees.

THE BRIEF OF APPELLANTS.

STATEMENT OF FACTS.

This suit originated by a suit in ejectment brought by the appellant Juan Martínó González against León Ramos Buist, Jesús Ramos Buist, Antonia Ramos Buist, Clemencia Ramos Buist, and Belén Ramos Buist in the District Court of the United States for Porto Rico. This suit was brought to recover possession of 100 *cuerdas* of land, more or less, situated in the District of Porto Rico, in the jurisdiction of Bayamón, which land was valued at six thousand dollars (\$6,000); for twelve hundred dollars (\$1,200) damages for withholding possession of said premises; and for thirteen hundred dollars (\$1,300) the value of the rents, issues and profits thereof.

The defendants and appellees plead as part of their answer *res adjudicata*, and a trial by jury having been duly waived by stipulation in writing between the parties, this cause came on for

hearing before the judge on the 9th day of July, 1908, on which date the court called upon the respective counsel for argument as to the question whether or not the plea as to the matters in issue being *res adjudicata* should not be sustained. Such argument was proceeded with, and the court, after hearing counsel for both sides, gave them until July 13th to file briefs and memoranda of authorities, stating that that thereafter the issue would be passed upon. Briefs were duly filed, which briefs set forth the facts as they appeared to the counsel of the respective parties, but no evidence to sustain these statements outside of certain certificates which were attached to the briefs was presented by either party. Upon these briefs, and without any further hearing, the court, on the 31st day of July, 1908, handed down an opinion and ordered and adjudged that the issue raised on the plea of *res adjudicata* of the defendants be sustained, and dismissed the cause with costs against the plaintiff. Whereupon appellant took this appeal to the Supreme Court of the United States, alleging the following errors:

I.

The court erred in holding and considering as evidence the arguments and oral statements of counsel for the respective parties, and also in holding and considering as evidence the briefs and written statements of facts together with exhibits annexed thereto, filed by counsel of the respective parties.

II.

The court erred in proceeding to determine, and in determining, the plea of the defendants without receiving and considering evidence in support of the same, or against the same;; and the court also erred in refusing to permit such evidence to be offered.

III.

The court erred in considering any evidence on the said plea and particularly the record in the former suit of *Anto-*

nio Ramos Mencos vs. Manuel Diaz Caneja and the judgment rendered therein as such evidence was not offered or admitted in the presence of the plaintiff or his counsel and no opportunity was afforded counsel for plaintiff to object to the admission of such evidence.

IV.

The court erred in not affording, and in refusing, plaintiff any opportunity to object to the admission in evidence of the record and judgment in the former suit of *Antonio Ramos Mencos vs. Manuel Diaz Caneja*.

V.

The court erred in receiving and considering any evidence on the plea of the defendants without first affording plaintiff an opportunity to object to the admission of such evidence and particularly the record and judgment in the former suit of *Antonio Ramos Mencos vs. Manuel Diaz Caneja*.

VI.

The court erred in holding that there was any evidence before it upon the plea of *res judicata* interposed by defendants; and also in holding that there was before it sufficient evidence to pass upon and determine the aforesaid plea.

VII.

The court erred in holding and deciding that for the purpose of determining the plea of *res judicata* no further evidence or proof was necessary than the briefs of the respective counsel with the exhibits attached to the same.

VIII.

The court erred in holding that the former suit of *Antonio Ramos Mencos vs. Manuel Diaz Caneja* and the

judgment therein rendered has the force of and is *res judicata* as against the claims set up by plaintiff in his complaint herein against the defendants.

IX.

The court erred in sustaining the plea of the defendants of *res judicata*; and also in dismissing the complaint of plaintiff herein.

X.

The court erred in entering judgment in favor of the defendants and against the plaintiff.

XI.

The court erred in entering judgment in said cause.

ARGUMENT.

The plea of *res adjudicata* sustained by the District Court of the United States for Porto Rico was based upon a certain judgment of the District Court of San Juan entered on the 29th day of July, 1900, and confirmed by the Supreme Court of Porto Rico on June 29, 1906. This judgment was entered in a suit brought by Antonio Ramos, the father of the appellees, in the case at bar against Manuel Díaz Caneja, to recover the possession of eighty (80) cuerdas of land in the jurisdiction of Río Piedras. Antonio Ramos died prior to 1907, and his children, the appellees in the case at bar, came to the District Court of San Juan and ordered execution, which was issued by the District Court on the 4th day of March, 1907, and under which writ the appellees were placed in possession of the property now in litigation, and this appellant was dispossessed. On the 31st day of January, 1890, cautionary notice of the beginning of the suit of Ramos against an estate of seven hundred and sixty (760) acres, more or less, in the jurisdiction of Rio Piedras, belonging to Antonio Ramos, but no entry was made against any property in the jurisdiction of Bayamón. Appellant derives his title to this property by deed from one

Eduardo González, dated on the 18th day of January, 1907, González having acquired his title from Díaz Caneja on the 4th day of January, 1890. Appellant was therefore in possession of the property at the the time the possession of the same was delivered to appellees under the execution issued by the District Court of San Juan.

The contention of the appellant is that although he took title at a time when the suit between Ramos and Caneja was still pending, the doctrine of *lis pendens* as generally known in the United States does not apply to him or to his grantor, Eduardo González, because of the provisions of the mortgage laws of Porto Rico as construed by the Supreme Court of the United States in the case of *Romeu vs. Todd*, 206 U. S., 358, 365, 369.

It must be borne in mind that the suit of *Ramos vs. Caneja* was for the recovery of land in the jurisdiction of Rio Piedras, whereas the land sold to appellant and for which this suit was brought was described as being in the jurisdiction of Bayamón. Neither Eduardo González, appellant's grantor, nor appellant himself was a party to the Ramos suit, so that, under the most favorable view of appellees, unless the record of the cautionary notice by Ramos in Rio Piedras served as a *lis pendens* this plaintiff cannot be held bound by said suit nor its consequences.

The registry system of Porto Rico with its rules and regulations are laws continued in effect by Act of Congress.

Decision April 12, 1900, in *Romeu vs. Todd, supra*.

The cautionary notice recorded by Ramos was not a cautionary notice either in its essence or in its form, nor such a notice as is required by the law.

"Each estate which is recorded for the first time in the registries shall be marked with a distinct and correlative number.

"The records corresponding to each estate (meaning each successive transfer or transaction) shall be marked by another correlative and special enumeration."

Article 8, Mortgage Law (parenthesis ours).

"Every record made in the registry shall contain the following details:

"(1) The nature, location, and bounds of the realty which is the subject of record, or which is affected by the interest recorded.....," etc.

Article 9, Mortgage Law.

"Cautionary notices shall be made in the same part of the book where the record would be made, if the right entered should be converted into a recorded right."

Article 75, Mortgage Law.

"A cautionary notice shall be null when the estate or interest entered, or the persons whom the entry concerns, or its date, cannot be identified therefrom."

Article 76, Mortgage Law.

"To indicate exactly the estates or rights which are the subject matter of the record, registrars shall act in accordance with the provisions contained in Article 9 of the law, subject to the following rules:

"First.—The character of the estate shall be described, stating whether it is rural or urban

"Second.—The location of the rural estates shall be fixed by a statement of the district, sub-district, or any other name by which the place in which they are located is known,," etc.

Article 63, Mortgage Law Regulations.

Articles 74 and 75 of the Mortgage Law Regulations provide for further details in the manner and method of recording estates.

"Cautionary notices of their respective interests in the corresponding public registries may be demanded by:

"(1) The person who enters suit for the ownership of the real property, or for the creation, declaration, modification, or extinction of any property right."

Article 42, Mortgage Law.

The person who brings the action for ownership, referred to in Case 1 in Article 424 of the law, may at the same time or subsequently request that a cautionary notice thereof be made, etc.

Article 91, Mortgage Law Regulations.

"Fifth.—If an entry of a suit for ownership is demanded, the date of the order permitting the action shall be stated, the object of the same, and the names of the plaintiff and defendant."

Section 5, Art. 126, Mortgage Law Regulations.

"The instruments mentioned in Articles 2 and 5 which are not duly recorded or entered in the registry cannot prejudice third parties," etc.

Article 23, Mortgage Law.

The foregoing citations from the Mortgage Law and its regulations present clearly the manner in which a record is made and some of its defects.

Thus when an estate is first recorded it is given a separate number, the municipal district in which it is situated is given, also the sub-district (*barrio* and its boundaries, etc.

Article 63, Regulations.

And cautionary notices, *lis pendens*, etc., with reference to that estate must be recorded under the same property number as the estate and in the book or volume corresponding to the same municipal district as that in which the estate is situated and recorded.

Article 75, Mortgage Law.

A careful reading of Article 42 of the Mortgage Law will reinforce this point, for that Article says: "Cautionary notices of their respective interests in the corresponding public registries may be demanded," etc.

So it is not in any registry nor any place haphazard in the registry that the cautionary notice must be recorded but at the corresponding place where anyone examining the status of the estate may see it. Thus, one looking up property number 90 in the Municipal District of San Juan will look in the San Juan volume and run down all the entries recorded under number 90. He at once sees the status of the property. It would defeat the very purpose of the registry to compel him to look in any other municipal district, or in any other place than where the property is recorded; it would upset and change the whole system and make of the orderly and concise registry of to-day, which stands as a ready and certain guide, a confused and unreliable record of documents and titles which cannot but tend to insecurity and uncertainty.

The fundamental and essential idea of a cautionary notice like a *lis pendens* in the States of the Union, is to warn third parties that though the record, as it stands, may show title in a person yet that title is being disputed and is the subject of litigation, and persons dealing with the record only do so at their peril.

It would therefore seem logical that the claimant and the record owner, in a cautionary notice as in a *lis pendens*, be different persons. It is absurd for a person in whose name the record title already exists but who may be suing for possession of a part of his property to place a cautionary notice against his own record title, because according to the system of registry in Porto Rico, so long as the record title is in his name, no one can gain recorded title excepting from him.

A owns an estate composed of 760 *cuerdas* in the Municipal District of Rio Piedras and his title to the whole of this tract was duly recorded. But B, an intruder, appears, takes possession of 80 of the 760 *cuerdas*. A sues to recover as owner, sets up his recorded title and prevails.

It is clear that under the Porto Rican system of registry the intruder had no record title to the 80 *cuerdas*, for these were already recorded in the name of A and included in the record of the 760 *cuerdas*; hence there is absolutely no necessity for A to make any

cautionary notice, for whoever buys from B does not buy from the record owner and cannot acquire any rights.

But suppose that B has fraudulently succeeded in having title to the 80 *cuerdas* recorded in his name as a separate and distinct property from the 760-*cuerda* tract, then the record is made under a separate property number, with a separate and distinct entry for this property. A sues to recover the 80 *cuerdas* as being a part of his 760 *cuerdas*—where shall the annotation or cautionary notice be made on the record, at the place where the entry of B's title to the 80 *cuerdas* appears, or at the place where the 760 *cuerdas* are recorded? To state the case is to anticipate the answer, for there can be but one sensible and reasonable answer.

It must be borne in mind that the purpose of cautionary notice is as much to protect innocent third parties dealing with the record owner as to protect the claimant himself. Hence, if A places a cautionary notice on his own title, at the place where his 760 *cuerdas* are recorded, he in no way warns the innocent third parties who may deal with B under the latter's record title and would be utterly unable to learn from the record of the existence of A's suit.

A's cautionary notice would in effect amount to this: "I am the record owner of this 760-*cuerda* tract, but B claims to own certain 80 *cuerdas* of it, is in possession of them, and I am suing him for them."

However, if the cautionary notice is placed upon B's title, where it logically belongs, then A's cautionary notice is in effect what it should be, to wit: "B appears to be the record owner of these 80 *cuerdas* and is in possession of them, but I claim to be the owner and am suing to recover them, so I warn no one to deal with B excepting at his peril."

The essential difference between the two notices is obvious. This is precisely the case at bar. Eduardo González had record title to 800 *cuerdas* (of which appellant claims the land in controversy is a part) was and had been in possession for seventeen years, and his grantor before him had been in possession nine years. Ramos, who owned an adjoining estate of 760 *cuerdas* and to which he had record title, claims that 80 *cuerdas* of the 800 *cuerdas*, of which González is in possession under his record title, belong to him, Ramos, under the latter's record title, and sues the grantor of González before the latter buys the 800 *cuerdas*. But

instead of placing a cautionary notice upon the record of the 800-cuerda tract in order to show third parties that 80 *cuerdas* of this were in dispute and a suit was pending as to the same, Ramos places the cautionary notice upon his own record title to the 760-cuerda tract, the two tracts being in separate and distinct municipal districts.

Can it be said that one who never knew anything about the suit and who saw González in possession, and had so seen him for many years, and now purchases 100 *cuerdas* of the 800-cuerda tract, in which 100 *cuerdas* are included the 80 *cuerdas* in dispute, makes the purchase with proper legal notice of the pendency of the suit so as to be bound by its results? We think not, and confidently submit the proposition to the court.

The Supreme Court of the United States said, in speaking of cautionary notices: "That the essence of the statute was the protection of innocent third parties dealing with the recorded owner when no cautionary notice had been given is obvious."

Romeu vs. Todd, 206 U. S., 365, and continued the court in the same case:

"As peradventure, then, the suit and the decree took from the recorded owner the ownership upon which necessarily the innocent third party must have relied, we think it clearly follows that the cautionary notice required by the provisions of the Mortgage Law was essential to affect the innocent third party."

We submit that the case quoted from *Romeu vs. Todd*, is absolutely determinative of the necessity of cautionary notices to bind third parties acting in good faith; and we as confidently submit that the so-called cautionary notice placed by Ramos upon his own property was no cautionary notice at all.

We have thus dealt with the question so as to endeavor to demonstrate to the court the inefficiency and nullity of the so-called cautionary notice as an absolute proposition.

There still remains another phase to be considered. The cautionary notice may in and of itself be all that it should be and yet not have any effect upon the rights of this plaintiff.

On January 4, 1890, Manuel Díaz Caneja sold the 800-cuerda tract to Eduardo González; the so-called cautionary notice was not

presented at the registry until the 27th day of January, 1890, and recorded four days later, or on January 31st.

Caneja was summoned in this suit brought against him by Ramos on December 31, 1889, but had already made every arrangement to sell to González, and all that remained to be done was to execute the deed, for which orders had already been given to the notary. The deed was executed January 4, 1890, as aforesaid, without González having any knowledge of the pendency of the Ramos suits as we are prepared to show.

We therefore claim that González was not affected by the pendency of the suit and took title free from the litigation or its results.

Now, if González, the immediate grantor of appellant, was unaffected by the litigation and enjoyed and held his title free from the consequences of any *lis pendens* or suit, we submit that this same title he transferred in 1907, or seventeen years later, to appellant, would not be affected thereby. As a matter of fact, after Caneja sold to González, Ramos asked the Insular Court, in an additional pleading, to cancel and declare void the deed to González so far as the same affected him, Ramos.

But the court did not accede to this request, and as González was never made a party to the Ramos suit, we do not see how either in that suit or in any other to which he was not made a party any title belonging to him could be cancelled or declared void.

But it may be claimed that González is not an innocent third party, and collusion between him and Caneja may be charged. Fraud is a matter of proof, not of presumption, and as yet there is no proof of this fraud. We are therefore now entitled to the presumption of innocence although we stand ready to prove it. So, then, our contention may be restated in a few words:

The so-called cautionary notice on the *finca* San Patricio was null and void, in fact, was no cautionary notice at all, and could not affect innocent third parties purchasing property recorded elsewhere.

Even though this be not so yet as the cautionary notice was made after González took title it could not affect him nor his successor in interest.

Counsel for appellees, in his brief which is set out in full in the third finding of fact filed by the lower court claims that the an-

notation was properly made in Rio Piedras, because the Supreme Court later decided that the land belonged to the Rio Piedras jurisdiction. As we will see later neither the Supreme Court nor the trial court decided nor undertook to decide the question of the boundary between the two jurisdictions of Bayamón and Rio Piedras. There is not one single word in either of said decisions which can justify the assertion that this boundary was decided. All that was decided was that the 80 *cuerdas*, according to the decision of the arbitrators by which both Ramos and Caneja were bound, belonged to Ramos with the boundaries that appear in the cautionary notice.

Now, of course, as Ramos did not claim to own any land in Bayamón, but only in Rio Piedras, the argument is that the court, in deciding in favor of Ramos, necessarily decided the land to be in the Rio Piedras district. To this we answer that the arbitrators had to confine themselves to the conditions and terms of the agreement of arbitration, and these were to determine the natural course of the brook Margarita. If this natural course was found to be to the east of a certain hill called Seboruco del Ray, then Caneja won.

The arbitration found this natural course to be to the west of said hill, and hence decided in favor of Ramos. The court held this decision of the arbitrators binding upon the parties and adjudged that Caneja restore the brook to its natural course and that he return to Ramos the 80 *cuerdas* which were formerly possessed by Ramos and the boundaries of which appear in the cautionary notice. Nowhere is it decided what and where is the boundary line between the two jurisdictions.

But to say that the annotation was properly made in Rio Piedras, because from the decision of the court we may infer that the court must have held the land to be in that district is to beg the question. For that very same land is also recorded in the District of Bayamón, and hence the annotation as the cautionary notice should also have been made on the record there, so that a person purchasing according to that record should be properly warned. Ramos knew that this record existed in the Bayamón District and his attorney, first attempted to have the cautionary notice made in Bayamón, but this annotation was refused by the Registrar on the ground that the property no longer belonged to Caneja and had

already been sold to González. It was then that Ramos, in order to at least be able to some day claim the existence of shadow of a cautionary notice, had it recorded at Rio Piedras.

As presented in brief filed on behalf of the appellees on the hearing on the plea of *res adjudicata* in the lower court, we again meet the assertion that the brook Margarita was the boundary line between the two jurisdictions of Bayamón and Rio Piedras. It may be a fact, but the Insular courts have never said so.

In the same brief on hearing on the plea of *res judicata*, counsel for appellees attempts to set forth the position or contention of Caneja in the old suit. We will say that Caneja contended that his estate was situated in the jurisdiction of Bayamón and that the eastern boundary of his estate extended to the *caño* of the *quebrada* Margarita and also to the brook (*quebrada*) Margarita. The *caño* and *quebrada* (inlet and brook) are two very distinct and different things, for while man may change the course of one, he cannot, except by stupendous labor, change the other or obliterate it.

At the time that the suit of Ramos against Caneja was commenced the brook Margarita ran to the west of the hill Seboruco del Rey, but Caneja contended that its natural course was 300 or 400 yards to the east toward Rio Piedras; whilst its then natural course was what Ramos claimed to be the proper and natural one. It is clear that only by moving the brook, eastward could Ramos be prejudiced and Caneja be the gainer, but Caneja claims that the very reverse of this had occurred and Ramos never claimed that the brook ever ran further to the eastward, which on account of hills was impossible, than it was then running. From the very nature of the ground any change in the course of the brook must necessarily result to the advantage of Ramos. Hence the third paragraph on page 3 of brief in behalf of the appellees in the lower court is an incorrect statement. Although not properly before this court, we may nevertheless advert to the ridiculous feature of the decision of the Insular trial court, when it ordered Caneja to restore the brook Margarita to its former and natural course. The court had decided that the natural course was to the west of the Seboruco. It was then running there and it was not claimed it ever had run further to the west, and no change or restoration was necessary to have the brook run in its natural channel. Any change would take it out of its so-called natural channel.

As presented in brief filed on behalf of the appellees on the hearing on the plea of *res judicata* in the lower court, counsel for appellees adverts to the wording of the cautionary notice. "From time immemorial a part of San Patricio belonged to Ramos, situated in Rio Piedras, Monacillo ward." This is the cautionary notice, the description of the land as given by Ramos, and is not the language of any court nor does it form part of the decision of any court.

On the same page of brief in behalf of appellees it is claimed that the Insular court considered the rights of González, nephew of Caneja, under the alleged transfer to the latter, before it entered judgment. We flatly say that the court decided nothing as to the nephew's rights and that the latter was not in court, was not a party to the suit. The court did say in its decision that it was not necessary to cancel the deed to González as a cautionary notice existed on the registry when the latter bought the land, and hence refused to order the cancellation. But the court was evidently laboring under a mistake when it said this, as González had bought on January 4, 1890, and had his title recorded on January 6, 1890, while the cautionary notice was made on January 27, 1890. But that is of no consequence at this point, for the court left the deed to González just as it was, a subsisting, actual deed.

The abstract of the judgment of the Insular court, as presented on pages 5, 6, 7 and 8 of appellees' brief is mistaken in a great many respects, and to enumerate these mistakes now would extend our statement in due length. Points are therein claimed to have been decided which we claim were never the subject of the court's decision, and facts are therein stated which we claim and hope to prove are totally at variance with the actual facts. One fact, for instance, stated on page 6, is that the course of the brook Margarita was diverted toward the southeast. This had never occurred, and Ramos himself made no such claim. Caneja had diverted it to the northwest and Ramos then claimed that that was its natural course, claiming all land to the eastward, while Caneja claimed all land between where the brook then ran and where it formerly ran.

Again, it is not decided, as is stated on the same page 6, that the brook Margarita is the boundary line between the municipalities of Rio Piedras and Bayamón.

Again, in brief filed on behalf of the appellees on hearing on

the plea of *res adjudicata*, it is stated that Caneja sold to González for the consideration of only one thousand dollars (\$1,000), together with the 80 *cuerdas*, etc. The deed of González, which we are prepared to show to the court, will disclose something entirely different. It will show that Caneja sold his estate of Pueblo Viejo but not "together with the 80 *cuerdas*, etc.," but including the 80 *cuerdas* not in separate and express words, but only as the 80 *cuerdas* were included in the whole description of Pueblo Viejo, and said deed will show that besides paying \$1,000 cash González assumed some \$9,000 of obligations including the obligation to transfer the western 400 *cuerdas* to his brother, Marcos González.

The second point of brief for appellees has no foundation either in fact or in law. We repeat the Insular court has never adjudicated the boundary line between Rio Piedras and Bayamón.

As a matter of fact, the taxes on these 100 *cuerdas* have always been paid in Bayamón, at first as a part of the 800-cuerda tract and then later as a separate tract.

But nowhere in the decision of the Insular court can such an adjudication be found.

But admitting that the alleged adjudication existed, would it be binding on persons not parties to the suit—on either of the municipalities, for example, which are certainly interested as the question affects their rights for the collection of taxes on certain properties and in other respects?

Neither the decision of October 6, 1884, of the Supreme Court of Madrid, Case No. 358, Vol. 56, of the *Jurisprudencia Civil*, nor the case of *Bank of Kentucky vs. Stone*, 88 Fed., 393, cited by defendant, are pertinent to the question at issue. These cases are not at all in point or in any way analogous to the present case.

Neither of said cases involve the title to real estate. The case decided by the Supreme Court of Madrid involved the construction of a will and determined the rights of inheritance thereunder, as to whether it was the collateral or direct heirs that should enjoy certain rights.

In *Bank vs. Stone* the validity of a tax was involved. The question was whether the Bank was liable for taxes other than those mentioned in certain law. The Bank claimed that because of a contract it had with the State neither the State nor any of its

agencies could impose upon it other taxes. The court having decided the question in one suit, it was held to be *res judicata* in a subsequent suit against the Bank by another agency of the State. It simply involved the establishing of a contract.

Presuming that the court will read for itself both of these cases, we will not describe them further.

But a suit involving title to real estate is a very different thing under the law of Porto Rico and under this law, which binds the court, in order that a decision in such a case may have the force of *res judicata* against a person not party to the suit but who acquires record title *pendente lite*, even from one who is a party to the litigation, a cautionary notice of the pendency of the suit must be made at "the proper place in the proper registry under the title of the property which is the subject of the suit."

The statutory law of Porto Rico limits the rule as to who should be considered privies in suits involving title to real property for the purpose of being bound by the result of the suit. But these points are fully explained by the Supreme Court of the United States in *Romeu vs. Todd*, already cited, and we will not dwell further on them.

But in Spanish as in American law certain unities must exist to sustain a plea of *res judicata*.

"Para que lo resuelto ejecutoriamente produzca la excepción de cosa juzgada en otro que se promueva después, y sea por tanto procedente dicha excepción, es indispensable que exista entre ambos pleitos *identidad* de personas, cosas y acciones, requisitos que han de concurrir conjuntamente, de suerte ~~que~~ si falta alguno de ellos ya no prospera dicha excepción.

Manresa Com. Ley de Eng. Civil, Tomo 3, p. 10, 109; Sentencias Tribunal Supremo Marzo 5, 1866; Sentencias Tribunal Supremo Diciembre 31, 1886; Sentencias Tribunal Supremo Octubre 20 and November 23, 1882; Sentencias Tribunal Supremo Junio 15, 1885; and the Civil Code of Porto Rico says:

"Section 1219.—In order that presumption of *res adjudicata* may be valid in another suit, it is necessary that, be-

tween the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes and persons of the litigants and their capacity as such.

"In questions relating to the civil status of persons and in those regarding the validity and nullity of testamentary provisions, that presumption of *res judicata* shall be valid against these persons, even if they should not have litigated" etc., etc.

It is true that between Caneja and this plaintiff the relations of *causa habiente*, or privy, exists, but for the purpose of *res judicata* in a suit involving title to real estate this relation is severed by the express provision of the Mortgage Law. Hence, one of the unities necessary to support this plea, to wit, "identity of parties," is missing and the plea should be overruled.

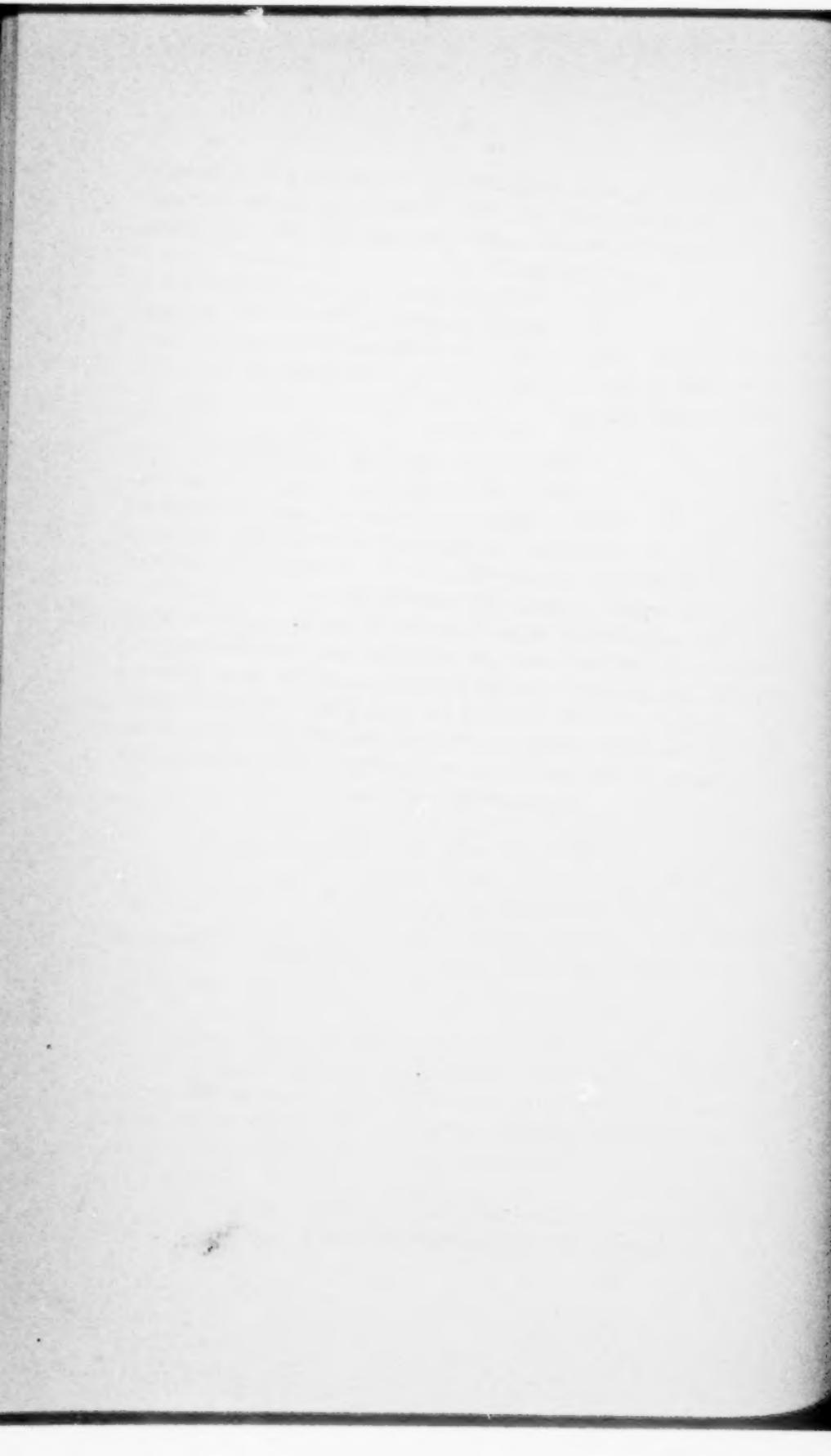
In conclusion we respectfully submit that the plea to the jurisdiction should not have been sustained, and that the foregoing reasons are respectfully urged as sufficient for the reversal of the decree of the District Court of the United States for Porto Rico, and for an order directing said lower court to proceed to the determination of the other issues raised by the pleadings herein.

Respectfully submitted,

H. H. SCOVILLE,

J. R. F. SAVAGE,

Counsel for Appellant.



OCTOBER TERM 1911.

No. 181.

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JAMES H. W.

JUAN MARTINO GONZALEZ, APPELLANT.

VS.

LEON RAMOS BUIST,
JESUS RAMOS BUIST,
ANTONIA RAMOS BUIST,
CLEMENCIA RAMOS BUIST,
BELEN RAMOS BUIST, APPELLEES.

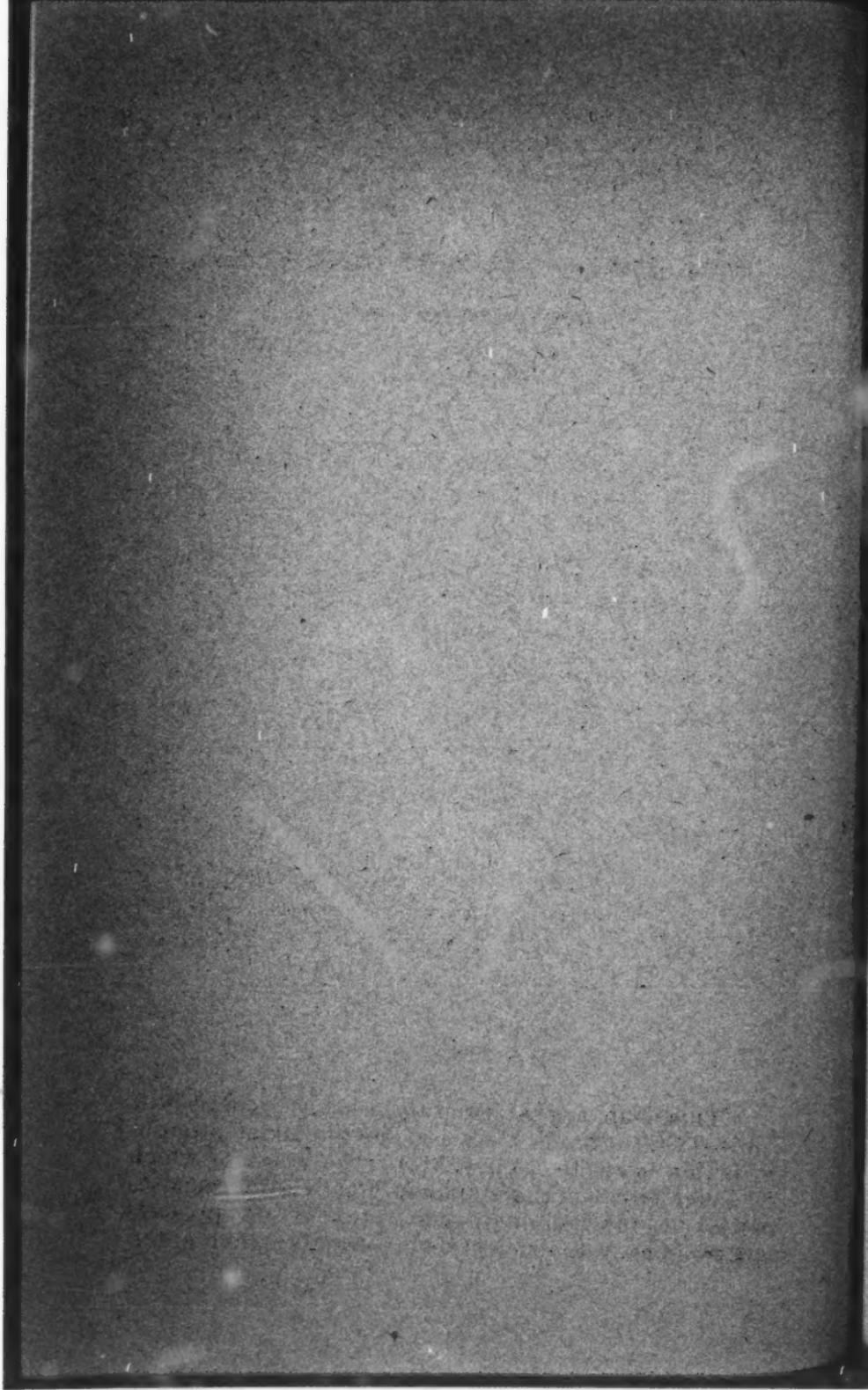
APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR PORTO RICO.

BRIEF IN BEHALF OF THE APPELLANT.

PUERTO RICO.

The Publishing Company

1911.



IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1911.

No. 181.

JUAN MARTINEZ GONZALEZ, APPELLANT

vs.

LEON RAMOS BUIST,
JESUS RAMOS BUIST,
ANTONIA RAMOS BUIST.
CLEMENCIA RAMOS BUIST,
BELEN RAMOS BUIST, APPELLEES.

BRIEF FOR APPELLEES.

(Counsel for appellees finds it extremely difficult to prepare a brief sure of consideration in this court without a copy of the printed record. This record has not been received, nor can it be printed and reach us in time to prepare a brief therefrom, by the time the case is called. We can refer only to the pages of the type-written transcript.)

STATEMENT.

This is an appeal from the District Court of the United States for Porto Rico. The appellant brought an action in ejectment in said court by virtue of which he sought to eject the appellees from certain premises described in the complaint and answer. The appellees answered as to the merits involved and further enter-

ed a plea of res judicata. Under this latter defense, they presented the record in the case of León Ramos Buist, et. al. (appellees herein) vs. Manuel Díaz Caneja, which latter cause was tried and determined in the District and Supreme Courts of Porto Rico, and as appellees averred at said trial in the said United States District Court for Porto Rico, fully adjudicated and determined all of the rights of the parties hereto. It is true that the cause in the Insular Courts was tried between the said Ramos and the said Caneja as parties thereto, but it was shown that during said trial, the said Caneja transferred the land in question to his nephew, Eduardo González Caneja, and the latter to Juan Martín González, the appellant herein. By amendment to the answer, the details of these transfers were set forth, the appellees charging that they were made for the purpose of avoiding the results of any judgment that might be rendered in the Insular Court against the grantor of appellant. This contention was met by the appellant with the contention that in as much as the appellant in this action was not a party to the action in the Insular Courts, the judgment of said Courts could not be res judicata as to him. The appellees contended that as the subject matter and the rights of the parties thereto had been adjudicated, and further that the boundary line between two municipalities had been fixed by the Supreme Court of Porto Rico in said decision, any further litigation seeking to change that line, or to disturb the title as settled by the Insular Courts, was res judicata.

The trial Court determined to settle this question first, and directed counsel to present briefs and such documentary evidence as they might have in support thereof for the consideration of the Court. All of this was done as directed. Counsel for each side submitted with their briefs the records from the District and Supreme Courts of Porto Rico, properly certified by the Clerk of the said District Court.

It was apparent that the action brought in the United States Court was simply an effort to obtain a new trial and a new adjudication of a cause that had been tried with great care and at which trial every detail and fact had been drawn out and explained,

and the court being fully satisfied from said documents that the plea of res judicata was well taken, sustained the same and dismissed the action.

THE ERRORS ASSIGNED

We believe it would, under the peculiar circumstances under which we must prepare this brief, be better to present at the beginning, the opinion of the court, as it will explain how the conclusions presented were reached and the proceedings had at the trial.

Following is a copy of the opinion and judgment found at pages 18 to 21 inclusive of the written transcript:

OPINION

(FILED JULY 31, 1908)

JUAN MARTINÓ GONZALEZ, }
Plaintiff. }
vs. } No. 456. Ejectment.
LEÓN RAMOS BUIST, ET. AT. }
Defendants.

This is a suit in ejectment to recover possession of 100 cuerdas of land situated immediately south of the bay of San Juan, Porto Rico.

The parties waived a jury trial and stipulated to try the case before the court alone.

A short oral hearing was had when counsel made their statements, but no witnesses were introduced.

After an inspection of the record we concluded that the plea of res judicata might be well founded, and therefore we called upon counsel to present transcript proofs of the same and written briefs in regard to the same which each soon thereafter did. Therefore the matter is before us now upon the general demurrer of the defendants and their said plea to the complaint.

There is in our opinion sufficient evidence before us in the way of exhibits filed with the written arguments of counsel to enable us to fully understand and pass upon this plea of res judicata, without calling

for or permitting any further proofs in the premises.

From a full examination of the matter we are satisfied that this suit on the part of this plaintiff is nothing more or less than an effort to get a new trial of an issue already decided and to circumvent the action of the Insular Courts where the matter has been fully tried and decided.

The remedy of this plaintiff, if he has any, is in our opinion to take an appeal to the Supreme Court of Porto Rico, if he can, or to move in the Insular court for a re-opening of the judgment, and not to attempt to attack it collaterally here.

We do not think the point about the warning notice made in the brief for complainant has any merit, and we fully agree with the contention of counsel for defendants that even though the parties suing in a cause are not wholly the same that were sued some time before in another proceeding, still if the same subject matter was passed upon, the matter is settled, because of necessity the decision will have to be the same in the latter trial where it turns upon exactly the same questions of law.

This plaintiff in our opinion has had his full day in court. He was ousted and dispossessed by the judgment and order of the Supreme Court of the Island, and every question that it would be possible to raise now was, as we see from the transcript of record before us, raised in the suit which resulted in that judgment.

As to the plea of res judicata in this sort of a case, see sentencia No. 358, Supreme Court of Spain, October 6, 1884, volume 56 Jurisprudencia Civil, where it was held that:

“Although it is sure that law 20, title 22 of the Partida 3, establishes that the principle of res adjudicata does not apply to persons who have not been party to the trial, it is also true that this rule is excepted in cases where persons plead the same rights, and base their pretensions on the same titles so that the judicial situation of the parties is identical in both instances.”

See also *Bank of Kentucky vs. Stone*, 88 Federal Reporter, 393-4 and citations which have some analogy.

It would be useless to have a further hearing on this plea as requested by counsel for the defendants, because we are satisfied that the matter has been fully settled in the insular courts during a protracted series of lawsuits, arbitrations, appeals, etc., etc., that has lasted more than seventeen years, and the remedy is not here at this time. The plea will therefore be sustained and the complaint dismissed with costs, and it is so ordered.

B. S. Rodey,
Judge.

JOURNAL ENTRY,

JULY 31, 1908.

JUAN MARTINÓ GONZALEZ, }
vs. } No. 456.
LEÓN RAMOS BUIST ET AL. }

This cause having been heretofore submitted to the court for trial under stipulation, without the intervention of a jury, and the Court having taken a portion of the evidence, and an issue having then been raised on the plea of res judicata of the defendants, and the Court having duly considered the same, on this date files its opinion in that behalf, and in accordance therewith it is:

Ordered and adjudged that the said plea be, and the same hereby is sustained, and that the said cause be and the same hereby is, dismissed with costs against the plaintiff, and that the defendants have execution therefor.

It is further ordered that because of the absence of counsel of plaintiff in the United States, the making of this order shall not prejudice the plaintiff in any of his rights in the premises to proceed further in the cause until the first day of November, 1908, or until five days after the return of his counsel, T. D. Mott, Jr., to Porto Rico.

The trial court did not err in its manner of procedure—its judgment was based upon duly certified copies of the records of the insular courts and the

judgments so certified were admitted by counsel for appellant.

~~As shown by said opinion, this case was duly called in the trial court. Upon the examination of the pleadings and the oral statements of counsel for both sides, the Court decided, and we think properly, to first take up the question of res judicata. As further shown by the opinion above quoted, the court then directed counsel to prepare their briefs and present in connection therewith such documentary evidence as they might have tending to prove on one behalf or to disapprove on the other, the issue of res judicata.~~

In accordance with said order of the court, the appellees, on July 13, 1908 filed their brief, together with their documentary proof as a part thereof, as directed by the court. This brief is found at page 30 of type-written record and continued to page 39 thereof, inclusive.

~~Beginning at page 40 of the type-written record, and continuing to page 45 inclusive, is presented a certified copy of certain findings of fact by the Insular Court, together with the judgments of the District and Supreme Courts of Porto Rico, found at pages 10, 11 & 12 of the type-written record, relied upon by appellees at the hearing to establish the defense of res judicata. This was evidence.~~

It is true as stated in the record that neither party submitted his brief to the other, but each appealed to documentary evidence in support of his contention, and there was no dispute or doubt of the correctness of the documents submitted; and it is equally true that either party might have filed a protest with the court against the reception of such documents, either because they were for any reason inadmissible, or incorrect, but no such objection was made.

The actual issue raised by appellant, and as we understand it, the only question involved, is whether or not the court was justified in entering the judgment found upon the facts before it.

The admission of counsel for appellant referred to is found on pages 45 and 46 of the type-written record. In that brief counsel for plaintiff said:

"Plaintiff (appellant) does not deny, but admits, the above judgments, but claims that they are not binding upon him, nor can they in any way affect him."

The court found as a fact that the land in dispute was the same tract that was so long and so fully litigated in the Porto Rican courts. The defendant had alleged the quantity of land in controversy to be 80 acres more or less. After this allegation had appeared, the plaintiff (p. 14 type-written record) asked and obtained leave to amend his complaint so that his claim would be for 100 acres instead of 80 acres as first alleged. Neither court nor counsel ever attached any importance to this change, because the land never having been accurately surveyed, neither party could state with exactness the amount involved in the controversy; although the boundaries of the same were well known.

The assignments of error might be stated in one paragraph to the effect that the trial court erred in holding that the doctrine of res judicata as in said action invoked was binding upon the plaintiff; and that the same was not binding upon him because he was not a party to the action tried in the Insular Courts; hence, plaintiff might interpose the various objections stated in the assignments of error.

Our contention in the lower court was and now is that further litigation relative to the subject matter of the action was res judicata.

This point we consider disposed of by the citations already given, viz., the quotation from the decision by the Supreme Court of Spain and the case cited from the 88th Federal Reporter, and citations (both *supra*.) As is usually the case, when a matter of principle is involved; when it is a question of right or wrong, little difference will be found between the decisions of this court, and the decisions of the highest court of Spain. Such at least has been the result of the

experience of the writer in many instances. In any event, we submit that the law is correctly stated in the cases referred to.

But the decision by the insular court settled more than the title to the land; it determined the boundary line between two municipalities, incidentally determining the title to the land. The insular court, (supra) held that one of the boundary lines of the land of the appellees was the boundary line between Rio Piedras and Bayamón; that the grantee of appellant changed the course of the brook, Margarita, and by so doing, changed the ancient boundary line between the two municipalities, and incidentally, added to his estate some eighty or one hundred cuerdas of land. The highest court of the land ordered said grantor to restore the brook to its old channel, to restore the ancient boundary line, and to return to appellees their land. Two questions thus became *res judicata*: The boundary line and the ownership of the land. This is true because it is undisputed that the land of appellees extended to the brook, and the fact of ownership and boundary are so interwoven that the boundary cannot be changed without the evident effect of transferring the land. It is apparent that the Federal Court would not thus place itself in conflict with the Supreme Court of the Island.

These consequences the grantee hoped to avoid by a transfer to his nephew, after appellees had brought their action against him in the insular court; and through his nephew to the appellant.

THE CAUTIONARY NOTICE

Much stress is laid upon the failure to record a proper *lis pendens*, or cautionary notice. The trial court held the notice sufficient, both as to form and substance. The fact that the notice was recorded in the municipality of Rio Piedras, in stead of Bayamon, is much discussed; but the fact that the Supreme Court of Porto Rico had held that the land was situated in the municipality of Rio Piedras, would seem to dispose of this phase of the case.

In our judgment, believing the case to have been

disposed of by the judgment of the local court, all other questions are eliminated. After the following admission by appellant, what more was to be heard:

"We admit that the 100 cuerdas claimed by plaintiff herein were included in said judgment, but deny that said judgments bind this plaintiff or are determinative of the question of title with respect to him"

We submit that the appeal is without merit, and pray that it be dismissed.

Counsel for appellees is also of the opinion that said appeal should be dismissed, because the same, having been tried as an action at law, could be taken to the Supreme Court of the United States only by writ of error; but appellees, having supposed said appeal to have been abandoned, took no steps in the premises, and do not have time to prepare and serve under the rule, a motion to dismiss.

Respectfully submitted,

WILLIS SWEET.

Counsel for Appellees

GONZALES *v.* BUIST.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

No. 181. Submitted March 4, 1912.—Decided April 1, 1912.

Appellant's contention that he was not accorded a proper hearing in the court below cannot be availed of here if the record does not show that he formally excepted or objected to the rulings. *Apache County v. Barth*, 177 U. S. 538.

Under § 35 of the Porto Rican act of April 12, 1900, 31 Stat. 85, c. 191, writs of error to and appeals from final decisions of the Supreme Court for the District of Porto Rico are governed by the rules that govern writs of error to and appeals from Supreme Courts of the Territories, which confine this court to determining whether the court below erred in deducing its conclusions of law from the facts as found, and to reviewing errors committed as to admission or rejection of testimony upon proper exceptions preserved. *Young v. Amy*, 171 U. S. 179.

On appeal from the Supreme Court of a Territory the agreed statement or findings must be of the ultimate facts; for if they are merely, as in this case, a recital of testimony or evidentiary facts, there is nothing brought to this court for consideration, and the judgment must be affirmed. *Glenn v. Fant*, 134 U. S. 398.

4 Porto Rico Fed. Rep. 243, affirmed.

THE facts, which involve the rules governing appeals from the Supreme Court of Porto Rico and the District Court of the United States for the District of Porto Rico, are stated in the opinion.

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Opinion of the Court.

Mr. H. H. Scoville and Mr. J. R. F. Savage for appellant.*Mr. Willis Sweet* filed a brief for appellees.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

Gonzales, the appellant, sued in the court below to be declared the owner and entitled to the possession of a tract of land valued at six thousand dollars, situated in the District of Porto Rico, from the possession of which he claimed to have been unlawfully ousted by the defendants in March, 1907. In addition to specifically denying the averments of the complaint, the defendants by an amended answer pleaded that as the result of a controversy between them and the grantor of the plaintiff concerning the land in dispute, the title and right of possession were adjudicated in their favor, and in virtue of the judgment they were put in possession of the property, which was the ouster complained of. Averments were also made which tended to show that the conveyance under which plaintiff asserted his ownership was made and received in bad faith after the commencement of the action the judgment in which was pleaded as *res judicata*, in order to deprive the plaintiffs in that action of the benefit to result from a recovery therein.

On July 9, 1908, the case was called for trial, a jury was waived, and after the allowance of amendments to the pleadings the following took place, according to recitals in the journal of the court:

"Whereupon the Court, not being satisfied with the situation of the pleadings, calls upon the respective counsel for argument as to the question whether or not the plea as to the matters in issue being *res judicata* should not be sustained. Thereupon such argument is proceeded with, and the Court, after having heard counsel for the

respective sides in that behalf, gave them until Monday the 13th instant to file briefs and memoranda of authorities, after which the issue will be passed upon."

On July 31, 1908, the court filed a written opinion sustaining the plea of *res judicata*, and ordering the complaint to be dismissed. An entry of dismissal was made on the same day. The next step in the litigation was the filing on October 12, 1909, of a petition for the allowance of an appeal to this court, and the granting of the same on October 26, 1909. Cotemporaneous with the allowance of the appeal there was filed with the papers in the cause a document styled "Findings of fact and conclusions of law." The opening paragraphs contained recitals of the taking of the appeal and that the court, upon the application of the appellant, "makes the following findings of fact upon which it based its final decree." The written agreement of the parties to waive a trial by jury was next stated, as also that argument was heard "as to the question whether or not the plea as to the matters in issue being *res judicata* should not be sustained," and the statement contained in the excerpt heretofore made from the journal as to granting leave to file briefs, etc., was reiterated.

It was next recited, in the opening sentence of the paragraph of findings numbered III: "That thereupon counsel for defendants, on July 13, 1908, filed, without first submitting the same to the inspection of counsel for the plaintiff, the following brief and statement of facts, with annexed exhibit." The remainder of paragraph III, found on pages 17 to 25 of the printed transcript of record, consists of a copy of the "defendant's brief on *res judicata* and the translation of what purport to be findings made in the judgment in the action pleaded as *res judicata*."

Paragraph IV of the findings opens with the following statement:

"That thereupon, on July 27, 1908, counsel for plain-

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Opinion of the Court.

tiff filed, without first submitting the same to the inspection of the counsel for defendants, the following brief and statement of facts with annexed exhibit."

Next follows a copy of a document entitled in the action and styled, "Statement and brief on plea of *res judicata*," found on pages 25 to 38 of the printed transcript, subdivided into headings entitled "Facts," "Documentary proof No. 1," "Documentary proof No. 2," and "Translation of Exhibit A," an alleged cautionary notice of the institution of the prior suit.

The findings of fact thus concluded:

"V.

"That with the exception of said briefs and statements so filed as aforesaid and the exhibits attached thereto, no other or further evidence was received, submitted or considered in this cause, and no further hearing of this cause was had.

"VI.

"That counsel for plaintiff requested the Court for a further hearing and that evidence be taken by the Court in support of the statements made by counsel for plaintiff and counsel for defendant in their respective briefs, and that the Court refused to allow any further evidence in the premises other than that contained in the Exhibits attached to said briefs, and the relief map presented at the hearing."

Declaring that it had sufficient evidence before it to pass upon the question of *res judicata*, the court, thereupon, as a conclusion of law found that the prior judgment was *res judicata* of the claims set up in the complaint and concluded as follows:

"The foregoing statement of facts, in the nature of a special verdict, and the above conclusions of law having been submitted by counsel for the respective parties and

Opinion of the Court.

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approved by the Court, the same is signed and certified, at San Juan, Porto Rico, this twenty-sixth day of October, 1909, and the same with a copy of the Court's opinion in the case will be transmitted to the Honorable the Supreme Court of the United States according to law."

The assignments of error are eleven in number, and state in various forms of expression the contention that the judgment entered was erroneous because plaintiff was not accorded a proper hearing upon the issue of *res judicata*. The appellant did not, however, formally except to any ruling or decision of the court on the subject, and in consequence, even upon the assumption that the objection of want of regularity in the practice pursued might, under some circumstances, be available here (*Salina Stock Co. v. Salina Creek Irrigation Co.*, 163 U. S. 109), it cannot on this record be availed of. *Apache County v. Barth*, 177 U. S. 538, 542.

There is nothing shown by the record which we can review, since what is denominated findings of fact is not such in legal effect, and the record does not contain any rulings of the court, excepted to, upon the admission or rejection of evidence. By § 35 of the Porto Rican act of April 12, 1900, 31 Stat. 85, writs of error and appeals from final decisions of the Supreme Court for the District of Porto Rico shall be allowed and may be taken to this court "in the same manner and under the same regulations . . . as from the Supreme Courts of the Territories of the United States." Now, as held in *Young v. Amy*, 171 U. S. 179, 183:

"It is settled that on error or appeal to the Supreme Court of a Territory this court is without power to re-examine the facts and is confined to determining whether the court below erred in the conclusions of law deduced by it from the facts by it found, and to reviewing errors committed as to the admission or rejection of testimony when the action of the court in this regard has been duly ex-

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cepted to, and the right to attack the same preserved on the record."

But whether the court adopts an agreed statement of facts or itself finds the facts, the agreed statement or findings must be of the ultimate facts, and if they be merely a recital of testimony or evidentiary facts, it brings nothing before this court for consideration. *Thompson v. Ferry*, 180 U. S. 484; *United States Trust Company v. New Mexico*, 183 U. S. 535, 540. As said in *Crowe v. Trickey*, 204 U. S. 228, 235, the statement of facts required by the statute should present clearly and precisely the ultimate facts, although, as further observed in the same case, a mere incorporation of unnecessary details may not be fatal if "a sufficient statement finally emerges." Under no possible view, however, of the findings we are considering can they be held to constitute a compliance with the statute, since they merely embody conflicting statements of counsel concerning the facts as they suppose them to be and their appreciation of the law which they deem applicable, there being, therefore, no attempt whatever to state the ultimate facts by a consideration of which we would be able to conclude whether or not the judgment was warranted. The case is analogous to that presented by the record in *Glenn v. Fant*, 134 U. S. 398, where it was held that an agreement that the parties might refer to and rely upon all the grounds of action or defense to be found in the voluminous records of two equity cases in other courts, including the pleadings and findings and orders and decrees therein, could not take the place of a special verdict of a jury or the special findings of fact by the court, so as to enable this court to determine the questions of law thereon arising.

No error being apparent on the record, the judgment of the District Court of Porto Rico must be and it is

Affirmed.